FEDERAL PRISON INDUSTRIES AND SMALL BUSINESS

HEARING

BEFORE THE

SUBCOMMITTEE ON PROCUREMENT, TOURISM, AND RURAL DEVELOPMENT

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

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FEDERAL PRISON INDUSTRIES AND SMALL BUSINESS

WEDNESDAY, AUGUST 1, 1990

House of Representatives,
Subcommittee on Procurement,
Tourism, and Rural Development,
Committee on Small Business,
Washington, DC.

The subcommittee met, pursuant to notice, at 9 a.m., in room 2359-A, Rayburn House Office Building, Hon. Ike Skelton (chairman of the subcommittee) presiding.

Chairman Skelton. The hearing will come to order. The issue before us today is the impact on small businesses of the Federal Prison Industries, Inc., a Government corporation run by the Justice Department.

This subcommittee has oversight jurisdiction over all Federal programs which have an impact on small businesses. We have small business witnesses with us, and each has a story to tell about the Federal Prison Industries system or UNICOR.

First let me say that we will not hear testimony today from representatives of UNICOR, because our original intention was to simply make members of this subcommittee more familiar with the issues and the effect of Government-sponsored businesses on the small businesses with whom they compete.

We decided at the beginning of this week that we had developed some questions that we would like to ask UNICOR, and we went to them with an invitation to be present to testify and answer questions. They were unable to be with us on such short notice, but they have volunteered to answer any questions we may have or come before this panel at any time in the future to answer our questions.

In their absence, if I may, let me play something of a devil's advocate.

On the surface, the Federal Prison Industries Programs would seem to be a godsend. The population in our prison systems has grown enormously in the past decade as the drug wars have grown out of control.

The thought that the prisoners could be kept busy making useful products for the Government and, thereby, helping to pay the cost of their confinement is an appealing one. I have reviewed the requirements under the law, and they seem eminently reasonable.

Indeed, I understand that just yesterday, the Board of the Federal Prison Industries reviewed the idea of getting into the shoe business and supplying shoes and boots for the Federal Government.

When they reviewed the idea, as required by law, they decided that it was a bad idea because of the dramatic impact on the shoe industry that foreign imports and military cut-backs have already had.

I think this is the correct result. It seems to me that this is the way that the law was designed to work.

Given that background, however, I have become aware recently that something is wrong. Zephyr Broom Co. in Sedalia, Missouri, which is in my district, used to provide corn brooms to the Federal Government. They still make brooms, but they tell me they don't even bother to bid on the Government work anymore because the prison industries have swept up all the contracts.

The response from impacted businesses has become louder and louder, and I suspect it is as a result of the rapid growth that must occur to keep the growing prison population occupied.

We have with us a representative sampling of the businesses that are impacted by the Federal Prison Industries.

The subcommittee wishes to thank Congressman Fred Upton who requested that this subcommittee hear this issue. Let me also acknowledge his strong leadership and interest in this issue.

Let me also acknowledge the strong interest and leadership on this issue taken by Congressman Glenn Poshard who has brought a number of cases to our attention.

Before I recognize other Members for opening remarks, I would like to submit the following items for inclusion in the record: First, the response of the Director of Federal Prison Industries, J. Michael Quinlan, to our invitation to be a witness; the testimony submitted for the record of Maynard Benjamin, representing the Envelope Manufacturers; and third, a letter to this subcommittee with an attached letter to Secretary of Defense Cheney submitted by Lois E. Bennett, the national president of the Council of Federal interior Designers.

Fourth, there is a letter in comment from Eddie Bass, the president of Signprint, a signmaking company in Springfield, Missouri.

[The letters may be found in the appendix.]

Chairman **Skelton**. Let me also say that we have had many other requests to submit testimony for the record, and that without objection, the record will be held open for 10 days to receive such testimony. Further, any prepared remarks or testimony that the Members or witnesses have will, without objection, be spread upon the record.

[Mr. Skelton's and Mr. Conte's opening statements may be found in the appendix.]

Mr. Poshard, do you have opening comments at this time.

Mr. **Poshard**. Mr. Chairman, I do not have any opening comments except to say thank you for holding this hearing. Representing a district with a Federal prison and also with manufacturers who are in competition with Prison Industries for certain products that they manufacture from my district, I've been in the middle of a continuing controversy and would like to see us, in this country, strike some appropriate balance between the need for rehabilitative industries within the prison setting, and yet not putting those rehabilitative industries in competition with people like Nationwide Glove where we have people's jobs at stake because of that.

So, just to see what we can do to strike an appropriate balance is the quest that I seek.

Chairman SKELTON. Thank you. For those who know me, I do attempt to start hearings on time, and I appreciate you all being with us today.

Mr. Upton, do you have an opening sir? I just gave a lecture on how I start meetings on time.

[Laughter.]

Chairman SKELTON. You are recognized, sir.

Mr. UPTON. Thank you, Mr. Chairman, for calling this hearing regarding the FPI and its effects on small business.

Chairman SKELTON. I have already complimented you publicly.

Mr. UPTON. Oh, you have.

Chairman SKELTON. Yes.

Mr. UPTON. Oh, good, shall I ask the clerk to read the—oh, no.

[Laughter.]

Mr. UPTON. I certainly commend your recognition that Congress, in fact, needs to examine the operations of this Government-sponsored corporation with the trade name UNICOR.

This is a subject in which I have been actively involved, and I am glad that you agreed with my suggestion that this topic would be appropriate for this subcommittee's consideration.

I regret that FPI officials have declined your invitation to present their perspective on these important issues.

I was first alerted to the impact of FPI by the office furniture industry in my southwestern Michigan district. According to industry estimates, FPI claims an alarming 23 percent of the Federal market for the office furniture products it makes.

Utilizing the unlimited borrowing authority tucked into the Omnibus Drug Act of 1988, FPI plans to make substantial expansions in its production capacity, even though its 1988 sales would rank FPI ahead of Chrysler in terms of worth of Federal contracts.

The more I have investigated how FPI works, the more I have become convinced that FPI is a good idea gone wrong. I certainly applaud the original intent of FPI to prevent inmates from rioting, to keep them busy, and perhaps in the process, teach them useful skills. Yet it has become clear that what started as private industries' concern about the unfair competitive advantage given FPI in the Federal procurement process through its super preference, has turned into a larger issue of proper oversight.

The more I have learned about the extent to which private subcontractors are utilized to provide products through FPI to the Federal Government, the more I learned how little even the Federal Bureau of Prisons or FPI board of directors knows about the operations of FPI, the more I learned how FPI has not been required to meet the same safety and performance standards as private Federal contractors, and the more I learned about the everyday operating practices of FPI, the more concerned I have become.

I strongly believe that now is the time to take a hard look at the operations of FPI, especially as it plans to expand.

Mr. Chairman, I appreciate the opportunity you have given us today to do just that.

Chairman **Skelton**. Thank you very much, Fred.

We have with us three of our four witnesses, Mr. Segundo Mercado-Llorens—do I pronounce it correctly, sir?

Mr. **Mercado-Llorens**. That's close enough, sir.

Chairman **Skelton**. Director of Government Affairs, United Food and Commercial Workers International Union here in Washington; Mr. William Collett, Nationwide Glove, Co., Inc., Harrisburg, Illinois; Mr. H. Van Jacobsen, president of Panel Concepts, Santa Anna, California.

The vacant chair is for Susan Perry. Susan Perry, can you help us in the absence of Mr. Lyons. Please, come and step forward. Would you identify yourself for the record?

Ms. **Perry**. My name is Susan Perry. I am the manager of Technology Services and Communications for the Business and Institutional Furniture Manufacturer's Association.

Chairman **Skelton**. Thank you very much. We will proceed. We will ask each of you to offer your statement, if you have one, in writing, and then you may summarize it in 2 or 3 minutes which will give us more time for questions.

Mr. Mercado-Llorens.

TESTIMONY OF SEGUNDO MERCADO-LLORENS, DIRECTOR OF GOVERNMENT AFFAIRS, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION [UFCW]

Mr. **Mercado-Llorens**. Thank you very much.

Mr. Chairman, I am director for Government Affairs for the 1.3 million members of the United Food and Commercial Workers International Union. I am pleased to be here today to speak to the interests and concerns of a number of unions relative to the danger of prison work expansions in various domestic industries such as apparel, textiles, furniture, and footwear.

These unions are the International Ladies Garment Workers' Union, the Amalgamated Clothing and Textile Workers Union, the United Steelworkers of America, the United Brotherhood of Carpenters and Joiners of America, and the UFCW.

I would also like to take this opportunity to thank you, Mr. Chairman, for the leadership you've demonstrated in holding this oversight hearing. As you have already noted, the FPI Board yesterday turned down the staff proposal to enter the Federal footwear market.

While this is an important step, nonetheless, the fact that FPI sought to expand into footwear demonstrates that there is a clear and present danger to this and other import sensitive areas.

Our unions believe this requires a legislative response in that such an expansion into footwear should never even have been seriously considered, given the footwear workers' virtual destruction over the last two decades at the hands of foreign imports.

Also, given that FPI acknowledged in its testimony last week before Senator Dixon that, "It is not easy to determine the best directions to diversify," some legislative direction is, it seems to me, appropriate.

Having said that, Mr. Chairman, permit me to make two basic points. First, we are not here to urge the abolition of Federal Prison Industries. What concerns us is the use of prison labor at taxpayers subsidized wages to displace American working men and women.

Second, whatever else one thinks of FPI, it is no small mom and pop operation. Its sales for fiscal year 1989 topped $360 million. It projects sales upward of $600 million by the mid-1990's. This, Mr. Chairman, is big business, and it hangs like a sword of Damocles over the heads of the American working men and women.

There are some common threads to FPI's intrusion into the industries which we assess here today. First, in apparel and textiles, as in footwear, there has been significant job loss due to foreign imports.

Second, workers in all four industries have borne witness to FPI's capture or potential capture of a significant market share, thereby placing in jeopardy the jobs of thousands of private sector workers and numerous small businesses. Let me explain.

In footwear, the import penetration level is over 80 percent. In apparel and textiles, it is 60 percent with a 223½ percent rise in apparel imports since 1973.

Imports have caused a virtual hemorrhaging of employment opportunity. There were 250,000 jobs lost in footwear since 1968. In fact, last Thursday the Belleville Shoe Co. in Illinois, which I believe is just outside Mr. Poshard's district, laid off over 200 workers represented by the UFCS.

In the last decade, ILGWU and ACTWU have seen 400,000 workers lose their jobs in shoes, apparel, and textiles, and 76,000 workers in these industries have lost their jobs in the last 12 months alone.

Jobs have been lost in furniture as well—almost 13,000 in furniture and fixtures category, and almost 2,000 in the office furniture category during the period February 1989 to February 1990. Yet, in the face of this labor surplus, FPI continues to expand.

In footwear, had FPI's proposal to penetrate the Federal footwear market materialized, it would have held a firm grip on between 38 and 64 percent of the market, depending on the category of footwear one looks at.

In apparel, its sales gained 87 percent of men's outerwear in the last year, while in draperies and office furniture, it already holds 38 and 23 percent of market share, prospectively.

It has been able to attain these numbers through the so-called super preference that Representative Upton referred to that makes FPI the required source of supply for Federal Government entities.

A perfect example of the result of this super preference is the case of one drapery manufacturer in Connecticut who lost out on a bid to provide draperies for Sheppard Air Force Base in Texas despite under-bidding the FPI by $6,000.

That same drapery manufacturer has been forced to cut his all minority work force by 62 percent since 1985, due to FPI's increasing share of the Federal drapery market.

Paradoxically, FPI's gain in market share in these various industries has occurred despite poor production quality and untimely delivery. In my written testimony, I have referenced letters to Representative Kastenmeier, chair of the House Subcommittee on Courts, Intellectual Property, and the Administration of Justice from various agencies and departments—Departments of the Army, Education and Energy—assessing FPI's qualities for and their delivery which is untimely.

At this time, I would ask that the letters which I have referenced in my written testimony be submitted for the permanent record.

Chairman SKELTON. Without objection, so ordered.

Mr. MERCADO-LLORENS. Mr. Chairman, as if FPI's intrusions did not create enough grief for the American worker, we may now be faced with the double whammy of prison work with an interstate commerce arm.

On June 28, the Senate adopted an amendment to the Crime bill which would create Federal Prison Industries enhancement certification, or a PIE Program modeled on State PIE's.

Astonishingly, the authors of the amendment—Senators Lott and Helms—justified their efforts on the grounds that this new Federal PIE would target import-sensitive areas. They specifically named shoes and textiles.

Mr. Chairman, I submit to you that this reads as if it were some lost chapter from an Orwellian novel. This new PIE could do business with State and local entities and the general public, and would thus present a major new source of competition for the American worker and should thus be opposed.

Because the UFCW worked closely with Congress on the original 1979 authorization of the State PIE's and helped craft its putative labor protections, we are uniquely positioned to express our judgment on this issue.

Frankly, State PIE's have made a practice of violating the labor protections contained in the authorizing statute. In general, they do not pay prevailing wages as they are commanded to do, and they do not consult with local labor. Therefore, we do not believe that this error, which time has compounded, can be cured by repetition at the Federal level.

Finally, Mr. Chairman, we offer the following recommendations with respect to prison work expansions:

First, there should be a prohibition on FPI expansions that would result in the displacement of employed workers, and that would occur in sectors of the economy in which there is a surplus of available gainful labor.

Second, FPI should not be allowed to expand production of import-sensitive products. This should be measured by taking a 5-year snapshot and looking at International Trade Commission rulings relative to unfair trade practices, as well as looking at import-to-domestic production ratios of 25 percent or greater during that snapshot period.

Third, FPI should be required to meet standards of quality and safety.

Fourth, FPI super preference should be modified to insure fairness in the procurement process.

Fifth, FPI should be required to sell its product at a fair market price.

Sixth FPI should be required to meet agency requirements on timeliness of delivery and include the costs of delivery and installation in the overall price quoted for an FPI product.

Seventh, the current State PIE Program should not be reproduced on the Federal level.

Each of these steps can and should be taken by Congress. I know that our unions look forward to working with you and this committee, Mr. Chairman, so that together we can meet the legitimate concerns of the American worker and find acceptable approaches to the matter of providing meaningful work in our prisons.

[Mr. Mercado-Llorens' statement, with attachments, may be found in the appendix.]

Chairman SKELTON. Thank you, sir. Mr. Collett, would you please proceed.

TESTIMONY OF WILLIAM COLLETT, GENERAL MANAGER, NATIONWIDE GLOVE CO., INC.

Mr. COLLETT. Thank you, Mr. Chairman. My wife admonished me to not use my southern Illinois twang, so if I do, Mr. Poshard will have to translate.

Chairman SKELTON. You sound just like him.

Mr. COLLETT. Mr. Chairman, my name is William Collett. I am general manager of Nationwide Glove Co. Nationwide operates four manufacturing facilities with slightly over 200 employees. All of these plants are located in Illinois—two in Harrisburg, one in Metropolis, and the fourth in Pontiac, Illinois.

Our sales for 1989 were $5.8 million. Of this total, slightly over $4 million or 69 percent represented sales to the Department of Defense and General Service Administration. The balance of $1.8 was domestic sales or industrial sales.

The imbalance is simply due to the fact that, as the previous speaker referred to, 70 percent of the gloves sold in the United States are imported gloves from China, Sri Lanka, and a lot of other countries.

Over the past several years, we have supplied hundreds of thousands of pairs of different types of gloves to the General Services Administration. This business has now been totally usurped by Federal Prison Industries.

In the past few months, I would estimate that over $15 million in contracts have been placed with FPI. None of this business was subjected to the competitive bidding process.

Over the past 10 years, we have been successful in obtaining contracts with GSA to supply gloves for use by the U.S. Forestry Service in their fire fighting efforts. We were aware that FPI was also receiving contracts for the same item.

Last year, by mistake, we received a release against a contract held by FPI at the Sandstone Correctional Institution. We were astounded to learn that FPI was charging GSA $11.29 per pair for the item.

Our price, achieved through the competitive bidding process, was $8.39. This meant that, in spite of their statement that they could be competitive, FPI was in actuality receiving taxpayer subsidy. This is patently unfair.

It is interesting to note that a couple of years ago I received a call from the manager from Sandstone's glove facility asking if they could come to our plant and learn how to make the gloves efficiently.

For the record, I refused the request. We consider FPI to be a competitor, and we don't extend a helping hand to competitors. We have, in fact, a firm policy of never speaking with our competitors in Government contract work.

The U.S. Forestry Service's needs for 1990 are now being supplied 100 percent by FPI along with 100 percent of GSA's other glove needs. This effectively removes an excess of $15 million of potential production from the domestic glove industry, a loss we can ill afford.

Until recently, at least to our knowledge, FPI had not been active in procurements by the Defense Personnel Support Center in Philadelphia. In June, a solicitation for 900,000 pair of cotton gloves was issued by the DPSC. We did a great deal of work preparing a bid for this item, only to be advised that FPI had exercised their prerogative and had the solicitation canceled in order that they might produce the item in their facilities.

This was done in spite of the fact that the solicitation was already on the street. The money expended by DPSC preparing and issuing this solicitation was forfeited.

We had planned to make an offer low enough on this solicitation to insure work for our cotton glove plant for the coming year. Now, unfortunately, we are facing the very real possibility of closing this facility.

If this happens, it will cause 60 people to go from working taxpayers to nonworking tax-users. It is our understanding that FPI intends to take additional glove procurements from DPSC.

The FPI claims that they are competitive with civilian producers based on their low labor costs. This is obviously misleading. Much more than labor costs are involved in producing this glove. We seriously doubt that a close scrutiny of FPI's actual costs of production, including among other things, administrative salaries, material usage, and all the other factors a private company has to consider in their cost computation, would show anything less than a loss on most of what FPI produces.

This is in spite of the fact that they seem to be able to command a higher selling price than those available to competitive bidders.

In that vein, we strongly urge you to look into how FPI selling prices are arrived at in order to show whether or not they are competitive, or are they simply being subsidized by the taxpayer?

If they use the highest price offered on a solicitation as a bench mark, this is unfair. Only the lowest price offered should be used to determine whether or not they are truly competitive, not the highest price.

We have no quarrel with FPI's desire to provide inmates with meaningful work. Instilling the work ethic is a laudable goal, even though we find it ridiculous to think that any released inmate is going to come to work for us and sew gloves.

What we do quarrel with is the growth of FPI into a $600-million corporation at the expense of private business, most of it by definition as small in size. We do not feel this was the intent of the legislation. We are certain that if FPI's activities were affecting large corporations, changes would already have been made.

Unfortunately, unorganized and diverse small businesses generally do not have resources required to mount a concerted effort to change this kind of situation. We must rely on our elected representatives.

If business operated in the manner that FPI is now allowed to operate in, the trust suits would fill our court systems.

Mr. Chairman, we, like any taxpayer, are delighted with the reductions that are and will continue to take place in the defense budget. I direct your attention to exhibits A and B attached to this statement.

This reduction is surely going to make out situation difficult. This would not be so traumatic if FPI was kept out of the glove business or, at the very least, restricted in their activities by some type of a quota system, and if such a quota system is used, percentages should be arrived at based on Government purchases only, not on total domestic glove sales. Using total domestic glove sales which includes the dollar value of imports, would be an unfair way of determining a percentage or quota.

Our industry has shrunk dramatically in the past 20 years due to the vast influx of imports. If FPI is allowed to continue unfettered, then there is a very good chance that the glove industry will cease to exist, or, at the very least, become so small that in a national emergency, sufficient quantities of gloves will simply not be available.

Surely, in a national emergency, the Government would not wish to rely on Federal prison industry for badly needed hand protection. Our industry is an employment opportunity for the undereducated and minorities. You don't need a high school diploma to sew a glove.

Speaking strictly for Nationwide Glove, I can assure you that if FPI is not restrained in their activities, the future of our corporation is in jeopardy. As a matter of record, we have already closed the plant in Gibson City, Illinois, due to lack of work.

If we have to close any of our other operations, I would be happy to have one or more of you committee members drop by and explain to our employees why their jobs have been sacrificed in order to maintain the vast bureaucracy of FPI.

We urge and beseech you to correct this inequity. We can in no way compete with the vast resources available to Federal Prison Industries.

Thanks very much.

[Mr. Collett's statement may be found in the appendix.]

Chairman Skelton. Thank you, sir. Mr. Jacobsen.

TESTIMONY OF VAN JACOBSEN, PRESIDENT, PANEL CONCEPTS, L.P., ON BEHALF OF BUSINESS AND INSTITUTIONAL FURNITURE MANUFACTURER'S ASSOCIATION

Mr. Jacobsen. Thank you, Mr. Chairman, members of the committee.

I am president of Panel Concepts, a relatively small manufacturing company headquartered in California, and we have two plants in California and one in North Carolina.

I am also here as president of BIFMA, the Business and Institutional Furniture Manufacturers Association, a nationwide trade organization made up of manufacturers of office, business, and institutional furniture.

As a matter of information, about 90 percent of the sales of office furniture in this country are represented by members of the association.

We are here today to voice our industry's frustration with Federal Prison Industries' [UNICOR] rapid growth in the Federal furniture market.

Let me begin by explaining what my company and other manufacturers must do to sell to the Federal Government.

First, we just do all of the things any private sector manufacturer must do. We pay our employees fair wages based on the industry that we are in and the community in which we live.

Most companies borrow money at above prime rate to pay for buildings, expansion, equipment, machinery, et cetera. We pay Federal, State, and local taxes—income, property, and social security.

We provide our workers with unemployment and worker's compensation coverage, as well as a pension program for their retirement.

We meet the requirements set by the Occupational Safety and Health Administration and the Environmental Protection Agency, both at the Federal level and at their State and local equivalents.

Our products meet the most current industry standards for safety and performance. Our pricing must be competitive as well as our quality, serviceability, and delivery.

In addition to the basics, the Federal Government requires that we go beyond industry standards and perform additional tests on products. We must meet requirements set by Underwriters Laboratories, the American Society of Testing and Materials, and other standard-setting groups. Our test results and testing facilities must periodically be inspected and certified by a third party.

Our pricing must be deeply discounted to sell to the Federal Government, with the deepest discounts going to the largest projects. Just the cost of preparing a bid can be high, especially in the case of a panel systems project.

To sell panel systems, complete layouts of facilities referred to as space plans must be made to determine the number and type of products needed. This is an expensive undertaking, but one that is considered part of doing business these days.

Our contact with Government procurement agencies is restricted. We are prohibited from paying the expenses to bring Government personnel into our factories or showrooms to show them how we manufacture the product, the quality that we put in, nor can we even buy their lunch.

Most importantly, our personnel and products must be the best, for it is only through our ability to compete that we will continue to have customers return with repeat business. This is a true incentive to insure that our quality, service, delivery, and warranty are what our customers expect.

But Federal Prison Industries, Inc., a Government-sponsored business, does not have the same set of requirements. The wages they pay amount to little more than dollars a day. They pay no taxes. They pay no social security. They pay no unemployment and no workman's compensation.

They receive part of their facilities, equipment, and machinery from Government excess, and if they must borrow money, the Omnibus Drug Bill of 1988 gave them the authority to borrow from the U.S. Treasury at less than the prime rate.

They do not have to deal with OSHA and the EPA. They are not required to meet industry standards or the additional requirements set by Federal agencies. Their pricing is set by the ambiguous term "current market price," and they have recently announced that if they prepare a space plan, and it is not used, the requesting agency will be required to pay for the cost of preparing the plan.

The FPI is also not prohibited from influencing Federal procurement personnel. When FPI received authority from Congress to borrow from the U.S. Treasury, Congress was told that this money was needed to finance prison industries construction.

Now FPI is using its money to entertain U.S. Government contracting officials. I have a copy of a letter from FPI to Air Force procurement and design officials located in Hawaii, inviting them to visit prison manufacturing facilities in Minnesota and Kansas.

The letter graciously provides a UNICOR account number to bill for expenses incurred for these visits. I will provide this letter for the record.

As a manufacturer, I am appalled at what would be considered unethical conduct if it had been done by a private contractor. As a taxpayer, I am incensed at this blatant misuse of taxpayer money.

It is with good reason that private companies and procurement officials are prohibited from any such activity, as it gives the appearance of favoritism. What makes this even more outlandish is that FPI has no need to do this.

The FPI has a congressionally mandated super preference. By law, Federal agencies must purchase, at prices not to exceed current market prices, such products from Federal Prison Industries as meet their requirements and may be available.

The FPI regulations have created a mandatory preference, compelling Federal agencies to buy from FPI regardless of its product's price, availability, quality, or impact on private contractors and the workers that they employ.

They have no competition, yet they have a very aggressive marketing program.

It is this super preference which removes FPI's incentive to provide the same level of quality, service, delivery, and warranty that private sector companies do. It is also this super preference that has changed what was originally a program to employ Federal prison inmates into a Federal program that is losing control.

Federal Prison Industries was originally established in 1934 as a means to employ Federal prisoners, keeping them occupied and under control. This was a noble goal and one which we endorse. We made that quite clear.

The FPI's mandate and subsequent legislation, passed as part of the Omnibus Drug Bill of 1988, states that FPI shall employ the greatest number of inmates as is reasonably possible.

The purpose of the Federal Prison Industries Program was and is to keep prisoners occupied and out of trouble. However, lately there appears to be another agenda for FPI as evidenced by their recent actions.

Their goal seems to have shifted from employing inmates to becoming sole source supplier to the Federal Government. Beyond bringing procurement officials into their facilities, they have sponsored trade exhibitions, again, at taxpayers' expense.

Their plans for expansion are ambitious, yet through their super preference they have so much business that they have to subcontract half of it. This is a direct conflict with their congressional mandate to employ the most inmates possible.

The FPI is big business. It currently projects its sale of all products to total $620 million by 1992. To put that in perspective, FPI will be a Fortune 500 company by that year, if not before.

In office furniture sales, it would be in the top 10 percent of BIFMA's membership. As evidenced by FPI's slow progress in expanding into other labor intensive, nonimport sensitive products, and its rapidly increasing sales of office furniture, its further growth will most certainly be at the expense of our industry.

The FPI is required to operate so as to avoid capturing more than a reasonable share of the Federal market for any specific product and reduce to a minimum its competition.

Our analysis indicates that FPI already has 23 percent of the Federal market for those office furniture products that it produces. We believe that this is an excessive hardship on our industry, and is in direct contradiction to FPI's congressional mandate that FPI not unduly burden any one private industry.

With all of FPI's advantages, they should be able to compete evenly with private industry companies. Therefore, we ask that FPI's super preference be removed. Not only would this provide needed relief to those industries such as ours which bear the brunt of FPI's rapid expansion, it would provide the needed incentive to FPI to be competitive in pricing, quality, delivery, and serviceability.

We believe that FPI can expand the number of inmates employed without increasing their share of Federal market sales. Their operations can be made more labor intensive. They can expand into those service areas that have felt the decline in the number of young workers available, and they must find new industries and activities to go into which are labor intensive and not at the expense of the corporate tax base.

As an industry severely affected by Federal Prison Industries, we are seeking legislative relief from this rapidly expanding Federal program. Congressman Coble's bill, H.R. 4347 in the House of Representatives, and Senator Dixon's bill in the Senate, will help industry by: Restricting FPI's use of its super preference; have all of Federal Prison Industries' products meet the same industry and governmental standards that private sector companies must meet, thus ensuring that their quality, safety, and durability are equal to the private sector products; sell their products at a defined fair market price; have FPI report its sales volume and market share; and have the purchase of FPI's products reported to the Federal Procurement Data Center.

We ask for your support of this legislation.

Thank you very much.

[Mr. Jacobsen's statement, with attachment, may be found in the appendix.]

Chairman **Skelton**. Thank you very much, Mr. Jacobson. Mr. Lyons, we appreciate you being with us. You were not here when we made the announcement that you may offer your statement in total and summarize if you wish.

We thank Mrs. Perry for volunteering to take your place before you came, however I understand she will assist you in your testimony; is that correct?

Ms. **Perry**. This is with Mr. Jacobsen.

Chairman **Skelton**. Mr. Jacobsen, OK. I'm wrong.

Ms. **Perry**. Would you like to go ahead with Mr. Lyons, or would you like me to explain what a kit is.

Chairman **Skelton**. You go with Mr. Jacobson.

Ms. **Perry**. OK. We've talked about the use of kits. They are products that are made by subcontractors to the point of final assembly. Then they are sent to Federal Prison Industries where final assembly takes place.

An example of a kit product is a chair. If this chair were to be manufactured as a typical manufacturer would make it, it would take 31 people in a factory to make this product line.

What it would involve is manufacturing operations such as a cut and sew operation where they cut the fabric, and they do the sewing, and an upholstery operation where this is glued on, posted, and stapled around. It takes metal fabrication to make the posts like this [indicating]. It would involve the subassembly of all these parts, the subassembly of a control mechanism, and all the cut and sew operations on the seat.

These parts [indicating], just so you know, are not made by the chair manufacturers. They are purchased outside. This is a cylinder. It is a very highly technical product. There are about four or five manufacturers in the United States that make these.

All chair manufacturers buy them from a subcontractor. These are not made in-house.

Very few of them make their own casters or bases.

What happens is that FPI gets a kit like this. In the industry, we call it KD furniture, or RTA, knock down or ready-to-assemble. It is kind of like the product you get Christmas Eve, and it says some assembly required, and you have to put it together.

They are sold this way normally because they can be shipped UPS. They come in small enough boxes that it meets UPS requirements.

This is the labor, the equivalent of the labor that UNICOR puts into a chair kit [indicating].

Chairman **Skelton**. Let the record show that it took Ms. Perry about 12 seconds to assembly the chair kit from its various parts that were on the table.

Ms. **Perry**. I admit, I've practiced.

[Laughter.]

Ms. **Perry**. This is not what you would call labor intensive manufacturing. In a factory, at the very most, you would use eight people to manufacture this product. Those eight people, the majority of them, would be involved in receiving, inspection, and shipping—getting it in the door, getting it out the door.

Trust me, there is no skill involved in this. So, when we talk about kits, we're talking about nonlabor intensive products. Somebody else in the private sector is doing the manufacturing operations.

Thank you.

Chairman **Skelton**. Thank you so much. Mr. Lyons.

TESTIMONY OF JOHN C. LYONS, PRESIDENT, AMERICAN SPACE PLANNERS, INC., AND REPRESENTATIVE, BUSINESS AND INSTITUTIONAL FURNITURE MANUFACTURERS ASSOCIATION

Mr. **Lyons**. First I would like to apologize for being late. It took me 2 hours and 20 minutes to get 40 miles from Baltimore.

My name is John Lyons, president of American Space Planners, an office furniture dealer in Baltimore, Maryland. I am here as a representative for BIFMA, the Business and Institutional Furniture Manufacturers Association, a nationwide trade organization formed by the manufacturers of office, business, and institutional furniture and their suppliers.

I am also addressing your committee on behalf of the independent office furniture dealer. Office furniture dealers, with few exceptions, are privately owned and operated small businesses.

Many of these small businesses are owned and operated by minorities. The UNICOR furniture manufacturing and marketing division of Federal Prison Industries is severely impacting our industry. Government mandated super preference status for UNICOR is unfair competition, since by law, no dealer may compete with UNICOR.

Our firm is neither small nor large, but is rather average with 30 employees. In order to compete, we must staff our company with degreed interior designers, project managers, and installation crews, as well as general office staff.

If UNICOR expands its market share of the furniture business and does not lose its super preference status, we may be forced to lay off almost half of our staff. We are not the exception; we are the rule.

Why am I here? I am not here to ask for a Government bail-out of my business or my industry. I am not here to ask for Government-guaranteed business. I am not here to ask the Government to assure our firm enough business to survive and put more people to work.

I am here only to ask that we be allowed to fairly compete in the Federal marketplace—no bail-out, no loans, no money, no guarantees; only the opportunity to fairly compete.

Our company has grown, in part, because we service our Government accounts with the same degree of quality service that we offer our commercial accounts in the private sector. It is ironic that by dedicating ourselves to providing high-quality goods and services to the Federal workers to improve their comfort and productivity, our firm finds itself threatened by the workers' employer—our Government.

There is another irony in this equation. Our suppliers must meet the highest standards for safety within their products. Through BIFMA, these standards are self-imposed, and total compliance is required. European and Far Eastern competition has had little impact on the office furniture industry.

The reasons are many: Great sources of natural resources coupled with massive investments in furniture manufacturing equipment driven by highly sophisticated computer software and an extremely competitive marketplace has allowed steady growth with little impact from overseas influence.

The irony is that with an industry that is solely responsible for its own steady growth and stability, an industry that offshore interests could not kill, is now in danger of being gravely wounded by its own Government. Where is the logic?

No person can argue with the positive aspects of prison labor. Why can't we use prison labor to solve some of the horrendous social problems that helped to drive many of these people to commit crimes? It makes sense and only helps our country. We need creativity. We need logic.

I will not bore you with the details of my personal plight with our small office furniture business. The chapter and verse of orders lost, red ink, and unnecessary hardship forced upon the families of terminated workers should be evidence to anyone hearing this testimony.

I am not here to beg nor to plead for fairness for my firm or for fairness for the thousands of other small businesses like ours. Fair is far too subjective to use in this instance.

People throughout the world work for years to send their children to our country. They do so because they want for their children what supposedly was mine by birthright—opportunity. All we are asking for is the opportunity to compete where we were once not only welcomed, but sought after as a conscientious supplier in the Federal marketplace.

Our small business, with a goodly number of minority participation, ask that you support Congressman Coble's bill, H.R. 4347 in the House of Representatives, and Senator Dixon's bill in the Senate.

Restricted use of UNICOR's super preference together with limitations on its growth in specific industries is the beginning of a return to a truly competitive open market. The benefits of such actions are many: Lower pricing to the Federal Government; high quality goods and services; increased tax base; reduce unemployment; and allow Federal Prison Industries to utilize prison labor to everyone's benefit.

We are suggesting that the evidence supports such action as a positive move in which everyone wins.

I thank you for your consideration while asking your support for H.R. 4347.

[Mr. Lyon's statement may be found in the appendix.]

Chairman **Skelton**. Thank you very much. Mr. Poshard.

Mr. **Poshard**. Thank you, Mr. Chairman. I appreciate the testimony.

I would just like to ask Mr. Mercado-Llorens about Senator Helms' and Lotts' legislation. Why would that legislation target import-sensitive products? What were the reasons given for that?

Mr. MERCADO-LLORENS. The logic, if that is the appropriate word, was that since these industries had already been destroyed domestically, weren't they after all appropriate for prisoners? And that maybe if you put the prisoners to work, some portion of those destroyed industries could come back to the United States, at least to the prisoners.

May I suggest to you that for workers in the footwear industry and leather and leather gloves and other import-sensitive areas, they don't feel destroyed. They have a job.

It strikes as anomalous in the extreme to say that hard working, law-abiding, tax-paying citizens should give up their jobs to criminals, and I say this after practicing criminal defense law for 10 years in New York City.

But I also say it as someone who represents 1.3 million workers, thousands of workers in footwear who are hard-put certainly to defend the proposal that FPI had put forward, and that was fortunately turned down by the Board yesterday, to expand into this area.

Mr. POSHARD. So, in essence, let's give up on the private industry to compete in this international market arena now and reduce it to Federal Prison Industries. I mean, that was the logic that was used. I understand.

Mr. MERCADO-LLORENS. That was the reasoning that was used.

Mr. POSHARD. Anyone can respond to this because in almost everyone's testimony the term "current market prices" came up, especially yours, Mr. Jacobsen. How is that currently defined in terms of Federal Prison Industries, and, in your judgment, how should it be defined?

Mr. JACOBSEN. The problem is that it is very difficult to define, and there is no specific there. There is a lot of weasel wording going on in some of the language here, so you can't define it. The fair market price is just a moving target.

Mr. POSHARD. So, restraints upon Federal Prison Industries based upon that definition really do not work in your judgment. I am trying to find out here why you folks referred to reasonable share of the market, that that is another restraint factor.

According to present rules and regulations, FPI is limited to a reasonable share of the market. What is that, in your judgment? What should it be? What should it be in your industry, Mr. Collett? I don't know.

Mr. COLLETT. I'm not sure that I know either. I point out in my statement that the share of the market in their case and in our case should only be the share of the military and General Service Administration market because to use the total market is a distortion.

If you gave them 15 percent of the total glove market, you give them all of the military and GSA business. I don't know exactly what that is. We have a problem. We don't know what the Government is paying FPI for the gloves. We know what they're paying us because it is a result of very, very severe and fierce competitive bidding situation.

They are not concerned with that, and as I point out in my statement, we find they are getting almost $3 a pair for an item, and I have to tell my people I can't give them an increase because we bid so closely on this thing. It is just not available, and then we find out that FPI's getting $3 a pair more. It is ridiculous.

I don't know what the fair market value of that is. Frankly, I don't know the total Government glove purchase.

Mr. **Poshard.** If there were some way for the Federal department and agency reporting of FPI purchases of national stock numbers, or Federal supply classification codes, or whatever so that that was out in the open. I guess what I'm hearing you folks say is that before FPI gets so prolific in producing any one product or garnering too large a share of the market, that they should, in essence, diversify into other kinds of things before they penetrate too deeply into essentially these three markets that you've mentioned.

Is that right? Is that a fair statement?

Mr. **Collett.** That's right.

Mr. **Jacobsen.** That's correct.

Ms. **Perry.** Mr. Poshard.

Mr. **Poshard.** How would we do that though?

Ms. **Perry.** The thing that we are talking about which is a removal of the super preference would take care of a lot of these problems.

If FPI had to compete just like any other company, then their prices would have to be competitive. The reasonable share of the market will be what share of the market they could get from the Government through competition.

They would have to meet industry standards for safety and quality because that's what's required of private industry. All the problems that we are looking at could be taken care of very easily by the removal of the super preference, by having them be like any other company.

Then they would have all the same responsibilities of every other company, and the rights of every other private sector company.

Mr. **Poshard.** You mentioned in your testimony, Mr. Jacobsen, that there is an uneven playing field in the sense that FPI doesn't have to pay unemployment and workmen's compensation, and they are not subject to OSHA.

Mr. **Jacobsen.** Right.

Mr. **Poshard.** Well, they won't ever be. I mean, obviously, they won't be, but where do you see the playing field evening up if it is not possible to even it up in those areas?

Mr. **Jacobsen.** I don't think those are just the only areas that we're concerned about. We're competing for work. When you drive competition out of bidding for Federal Government work, you are eliminating the private enterprise system and one of the reasons this country is so great.

We recognize, as manufacturers, that we have costs, and we go very deep in discounting on Government projects so I think that we can compete. I suppose there has to be a bottom someplace, but we'd like to see a level playing field. The super preference just destroys all that competition. There are many manufacturers that don't want to participate, won't even go to the trouble of preparing a bid for the Federal Government because they say they don't have a shot at it.

Mr. POSHARD. So, basically we get back to some firmed-up definition of what constitutes a reasonable share of the market, right?

Mr. JACOBSEN. It is very difficult to do that, but some people say reasonable share would be 10 percent, but it is difficult. To me, that seems kind of high, frankly.

Mr. MERCADO-LLORENS. Mr. Poshard, may I also speak to that issue?

Mr. POSHARD. Sure.

Mr. MERCADO-LLORENS. The gentleman over here has already referred to potentially 10 percent of the market. In the phrase "reasonable share of the market," it seems to me there are two key words there—reasonable and market.

So, for Congress, what is the question? How to define reasonable? Perhaps a 10-percent share, but that has to be cast against the nature of the market that one is looking at as well.

If you have a market in an import-sensitive sector, 10 percent of an already devastated market is certainly going to be too high. So, with respect to the second word in that phrase, market, I would certainly address it in the way that is suggested in my written testimony, and that is, look at international trade commission rulings in defining import-sensitive; to have some legislative direction to FPI that import-sensitive sectors are not the appropriate direction for FPI to enter or expand into; and to look at import-to-domestic production ratios which is certainly as an objective indicator as you are going to find on these questions.

The other matter is to look at fair market price and insure that the FPI is required to operate at a fair market price, to offer its products at a fair market price, and fleshing out the definition of that not to exceed current market price.

Mr. POSHARD. Thank you.

Chairman SKELTON. Mr. Neal.

Mr. NEAL. Thank you, Mr. Chairman. I would like to ask the panelists, could you cite some specific examples that you are aware of that—go ahead, Mr. Lyons, you seem pretty anxious.

Mr. LYONS. I have specific instance in which I have a Government agency in which we were doing approximately $1–$2 million worth of furniture business with, as are many other companies, not only ourselves. We don't control the furniture business for that specific agency. There were many who were doing more business.

Within the last 12 months, a procurement officer came into that agency with a dictum that no furniture would be bought for that agency unless it came through UNICOR, Federal Prison Industries.

We asked what about the 9- to 12-month lead time of deliveries, and we asked what about the pricing. We were told in both cases it made no difference whatsoever. The procurement officer's interpretation of the dictum was that they must purchase from UNICOR.

I know it has cost our business a tremendous amount of furniture business, as well as other suppliers to that agency. That is a specific example.

Mr. NEAL. Could the other panelists perhaps cite some examples of work that was lost? I know that the labor representative did earlier, but perhaps the other panelists might address this.

Mr. COLLETT. I am referring to the General Service Administration's forestry gloves that we sold $2½ million worth to GSA last year. FPI has taken it entirely.

I don't mean to say that our sales are going to go down by that. What we have been forced to do is take a look at DPSE procurements and cut our bidding price so low that we are actually below cost to maintain our employment.

The $2.5 million that we did with GSA for the Forestry Service last year was reasonably profitable. We will not have that. As I said, they took one bid right off the street. We wanted that badly for one of our plants.

The only way we can get it is competitive bidding. I don't mean they are just going to hand us the contract, but at least we can structure a bid that we are pretty well going to guarantee ourselves we are going to get part of that work, whether we make any money on it or not.

At this point in time, they forced us simply to run our plants to maintain our employment in hopes that things will get better.

Mr. NEAL. Mr. Mercado-Llorens.

Mr. MERCADO-LLORENS. With respect to draperies, of course, I noted the case of manufacturing in Connecticut. The Federal drapery business has been—FPI has cornered 38 percent of the Federal drapery market.

In order to cast this properly against FPI's experience relative to quality, I would like to point out that FPI is taking this business and cornering these markets despite such assessments as the following regarding its quality.

The Department of Army, in a letter to Representative Kastenmeier, indicated relative to furniture, "The pressed wood furniture does not hold up well and often comes apart when moved."

The same Department of the Army, in the letter to the same representatives and the same letter, indicated with respect to shoes, "Most people cannot wear the shoes more than 1 or 2 hours a day due to aching feet and legs."

So, you have poor quality, and other letters indicate poor timeliness of delivery, but you have at the same time, FPI as being the required source of supply and taking over where small business might wish to enter and might wish to expand.

Mr. NEAL. Thank you, Mr. Chairman.

Chairman SKELTON. Thank you. In the order of the Members coming, Mr. Bilbray, I believe you are next.

Mr. BILBRAY. Thank you, Mr. Chairman. I am interested in this subject, and I'm glad you brought it up, because in the State legislature we also wrestle with this problem in the State of Nevada, finding some things that we were astonished about as to what other States did.

For instance, we were not aware that Best Western, at least at one time—I don't know if they still are—when you call the 800 number, you are dialing into the women's prison at Tempe which answers the 800 number and makes the reservations. They have a constant source and do not have a drain of pool. Their employees are always on the job. They don't have to worry about them calling in sick.

Chairman SKELTON. Mr. Bilbray, that falls into the you've got to be kidding category.

Mr. BILBRAY. That's what I was told on that, and then on furniture, the mattresses were all coming out of the men's prison in Tempe.

So, in States like Nevada, which I come from, they look out to find out if there are ways to cutting down expenses of running the prisons, and I am sure that's the whole Federal system, not just to keep people working but also hopefully generate some sort of profits that reduce the cost of this sort of thing.

I would ask the committee staff if they could maybe make available to the committee the facts that show how much money is saved in the prison system by running this type of industry.

I am concerned if we are losing money because in the State of Nevada we started a couple of prison industries that actually lost us tons of money. We were selling our products, and we were getting a market, but we were actually losing money and were not supplementing the cost of running the prison which was the original intent.

I am not saying Nevada still isn't out there looking to try and find methods of doing it. We also found that we were breaking the minimum wage laws because at one time we were producing brooms, and they were paying the prisoners $1 an hour for the work that was done to make the brooms.

As long as the brooms were sold intrastate—in the State of Nevada—the wage and hour people didn't come in, but once we started sending it across the State lines, and the enterprising businessman who was involved found that all of a sudden he was assessed with $190,000 in back wages that he hadn't paid, he went out of business and flew the coop on the State of Nevada without paying the back wages. He left town.

So, there is a big concern in these things that first of all, the product is good. I am concerned from the reports of the Army, and I wish the committee staff would follow up with that and talk to the other agencies, and find out are we producing sub-standard quality merchandise, and selling it to the services, and not giving them any opportunity to bid out?

Second, are we making any money on it, and are we able to really reduce the cost of the prison, per prisoner, by this sort of thing.

So, I am concerned from the testimony I heard today. I have always been a great advocate of prison industries as a way of trying to keep the prisoners working, but also reducing the costs of the prisons.

From what you are telling me today, maybe we are not doing that. Hopefully, this committee can go out further and meet with the representatives of the Government who are buying these products and second, get some facts and figures to see if we are actually saving money by doing this sort of thing, or should we have our prisoners doing the typical things that Nevada has done for years, making license plates and things like that?

Thank you, Mr. Chairman.

Chairman SKELTON. Thank you. Mr. Lancaster.

Mr. **Lancaster**. I apologize for being late in coming, and I missed much of the testimony. It may very well be that my questions were answered by testimony which I didn't hear.

I am concerned because of what I have heard here, but I also have an interest, as Mr. Bilbray has just indicated that he has, and that is that we provide meaningful activity and employment for prisoners.

I frankly am opposed to prisoners sitting watching TV all day long and feel that by having meaningful work to do, this improves discipline, improves moral, improves health, all of which are important goals. If there is a profit, I think that really is a secondary benefit.

Most important of all, however, I believe that we can provide important on-the-job training for prisoners to hopefully reverse the cycle of continuing to return to prison if, in fact, when they are released they have meaningful employment training that will allow them to make a living and not go back into a life of crime.

So, I wonder if you, each of you perhaps, could indicate what you think appropriate prison industry would be. What kind of activities would be appropriate for prisoners to engage in, or are each of you interested in no competition from prisons, and you would just as soon these prisoners sit in their cellblock and watch TV all day?

Mr. **Mercado-Llorens**. If I may answer that, Mr. Lancaster.

The House Judiciary Committee has a provision in its crime bill that was sponsored by Mr. Kastenmeier that calls for a market study to determine those areas of business growth which might be appropriate areas for FPI entry and expansion.

One of the problems that we have is what will happen during the pendency of the study, but in terms specifically of your question, I think that at least one body of this House has spoken to that issue and determined that a study is going to be needed to assess where are the appropriate avenues for FPI entry and expansion, and we would support that study.

Mr. **Lancaster**. All right, but can you tell me, do you oppose any prison employment?

Mr. **Mercado-Llorens**. Absolutely not. In fact, as I stated at the outset of my testimony, I am not here to urge the abolition of FPI. As a former criminal defense attorney, I fully understand the need of prisoners.

Chairman **Skelton**. You mean an attorney representing those accused of crime, is that correct?

Mr. Mercado-Llorens. An attorney representing those who are currently manufacturing FPI products.

[Laughter.]

Mr. **Lancaster**. But it is sort of like the problem we have in Congress—everybody is interested in additional revenues as long as you don't tax me. Is that your position?

Mr. Mercado-Llorens. Absolutely not, and, in fact, as I said, I think this problem is a complex problem, and I think I would feel somewhat irresponsible if I would just off-the-cuff, willy-nilly suggest several industries without consulting my research department, without consulting the industries, without having a full assessment of what the market problems are in those industries.

This is why I think the market study proposed by Mr. Kastenmeier and the Judiciary Committee is the way to go.

I would also suggest, in a separate but related issue, with respect to the PIE Programs, the State PIE Programs, that this body at least should be on notice that the State PIE Programs were expanded by the Judiciary Committee from 20 to 50 and the expansion of State PIE's, which I noted in my testimony, would create further problems in that they do not pay prevailing wages and do not consult with local central labor bodies, is something that the House is ultimately going to have to address.

I understand that the matter is going to be referred ultimately to Education and Labor, and I would hope that something could be done there.

Mr. LANCASTER. Let's quickly move down the table and see if we have other comments about what appropriate use of prison labor might be.

Mr. COLLETT. To be brutally honest, I would rather them sit in their cells and watch television if it is going to put me out of business.

Meaningful is the term. In our industry, in the glove industry, there is no sense in training these men to sew gloves. They are just not going to come out and do it. I don't know what else they can do. Maybe they can make furniture.

[Laughter.]

Mr. COLLETT. I have no answer to that. All I know is that if you are going to take prison industry and kill an industry, it makes little sense to train them to go into that industry.

Mr. BILBRAY. Will the gentleman yield on one question.

Mr. LANCASTER. Yes.

Mr. BILBRAY. Maybe a line that I have been thinking a long time, that our industries, we have taken testimony on over the period of the last 2 years on this committee where we actually are not in the industry anymore because the offshore companies—the Koreans and the Taiwanese have driven us out.

I was thinking of the albums that are made for photographs and things like that. I wonder if you know of industries that we've lost because of cheap labor in Mexico, Taiwan, and Korea that may be applicable, that maybe your industry could come back to us and give us a list of industries that are applicable that won't affect American jobs but might take some of the foreign exports out of the market.

Chairman SKELTON. In line with that, I might point out to our witnesses that our record will be open for 10 days, and if you have a bright idea in answer to Mr. Bilbray's request, feel free to give us a letter within 10 days that might be helpful.

Mr. JACOBSEN. Well, as a matter of interest, it is my understanding that our BIFMA office conducted a survey of all of our manufacturers members to see if any of them had anybody on their payroll who was trained by Federal Prison Industries to come and work in the furniture business.

We could not come up with one, not one.

Mr. LANCASTER. All right, but that's not my question. My question is are there appropriate jobs that prisoners might do in prison industries or are you like Mr. Collett, willing to have the prisoners just sit in their cellblock and watch TV all day.

Mr. **Jacobsen**. Personally, I would rather have them occupied, but I think in some ways it would be a bit presumptuous of me to suggest other industries. I have my hands full thinking about my company and our BIFMA members, but I will give it some thought, and if anything comes to mind, I will be sure to submit it to the committee.

Ms. **Perry**. Mr. Lancaster, I am not sure whether you were here when I did the demonstration.

Mr. **Lancaster**. I was.

Ms. **Perry**. The labor involved in making a chair.

Mr. **Lancaster**. I don't want to get into that.

Ms. **Perry**. If their products, if FPI was compelled to make their products totally like a normal manufacturer does, they could employ a lot more people without increasing, in effect, but decreasing their market share, their share of the Federal market.

So, what they should be looking at is becoming more labor intensive with the products they have.

There are other things. We testified, BIFMA testified before the House Judiciary Committee and made some suggestions—things in the area of recycling and sorting trash, in the area with minimum security prisoners, there are some States that have done programs. I think the State of Massachusetts has done a program where they had taken women prisoners out and taught them to do things in the area of renovation of buildings.

They went out and they replastered, wall-papered, painted, and things like that, in buildings that were in disrepair and under a very controlled situation. Under controlled supervision, they were able to turn these houses into low-income housing.

There are a lot of problems in this country that we are facing today that throwing some labor at them could solve, or at least help a lot. I think that the market study is one thing, and I think there has to be some creativity on the part of the Federal Prison Industries to come up with some new ideas.

We have offered, as an association, to work with them in these areas, and we make that offer again.

Mr. **Lancaster**. Mr. Lyons.

Mr. **Lyons**. I certainly accept the challenge of your question. I was asked to come here and state the problem that my business was having and have done so, with little thought given to other markets or Federal Prison Industries.

I would suggest, however, that certainly the Federal sector must be looking, as your question indicates, in how to keep the prisoners busy fruitfully, hopefully with some training, or when they get out, and also hopefully at a profit, to keep the whole system running.

I don't want to see them sitting in their cells doing nothing, because I think it is totally unconstructive for them and the system.

However, I would feel that a creative committee put together from the private sector would be a welcome thing to look into markets for the Federal Prison Industries because the Government sector must look at it. Not only should but must look at it from a standpoint of the prisons and the labor itself.

Perhaps a committee put together from the private sector can help do that and do so in a way that may be noncompetitive with some of our private sector companies.

Although, as a small business person, I am putting in 12-hour days and don't have the time, I know I would find the time to work on such a committee.

Mr. LANCASTER. Now, getting to the kit problem, and to be honest, I have looked at the Coble legislation, and I don't see that is addressed at all. Is there other legislation before us that the kit problem addresses, or that addresses the kit problem?

It appears to me, and again I didn't hear the testimony, but I saw the demonstration, that this may be a way that small businesses are getting around, not getting around, but are abusing the super preference by building all the component parts and then having prisoners put it together, and then they get their product that super preference.

Is there some legislation that addresses this, and if not, is that just a problem that you are raising for us to consider?

Ms. PERRY. The Coble bill does address it in that it calls for prison-made products to be manufactured. It doesn't say assembled.

Chairman SKELTON. On the premises. Does it say that?

Ms. PERRY. Yes; it indicates that the products should be manufactured.

Mr. LANCASTER. All right, but does it prohibit assembly, because assembly is a manufacturing process and my guess is that assembly would be defined as manufacturing?

Ms. PERRY. I don't have the bill right in front of me. I would have to look at it. We did think that it was addressed within the bill. There may have to be some changes in those provisions to specify it a little tighter.

Mr. LANCASTER. I think you need to look at that and perhaps give us a follow-up statement.

Ms. PERRY. Sure.

Mr. LANCASTER. I agree with you. Simply using small business subcontractors——

Chairman SKELTON. Excuse me. In a quick perusal of the legislation here, of the law, it doesn't seem to have it.

Mr. LANCASTER. I don't see that it addresses it either, but maybe it was intended to address it. I don't think the prison industry should be used as a way to get an advantage to businesses by simply having prisoners do an unmeaningful assembly.

It is just like cutting all the pieces and having them sent across the border into Mexico and assembled, and then brought back in under some sort of preference. You can do lots of things to abuse the system and this certainly seems to me to be an abuse.

I think this should be addressed by the legislation, if it isn't, or by some other legislation if this is not the appropriate vehicle.

But I wonder, Russ, if we could look at that and maybe—is this a sequential referral or are we holding a hearing on something we are not going to have any jurisdiction on?

Chairman SKELTON. The jurisdiction is scattered like a shotgun. Part of this will be addressed by you, Mr. Bilbray, and me in a defense bill, probably this year.

Mr. **Orban**. In answer to your question, we do not have a sequential referral. We have not, at this point, asked for a sequential referral on this particular bill. We have jurisdiction under Rule 10 in an oversight capacity on any Federal program that bears on small businesses, and under that oversight jurisdiction, we have held this hearing.

But there is nothing preventing us from requesting it.

Mr. **Lancaster**. Well, I think we might want to, whether or not we explore jurisdiction, we certainly might want, in our oversight role, to address this particular abuse, because I see it as an abuse and perhaps can strengthen Mr. Coble's legislation in that regard.

In closing, Mr. Chairman, I would simply say that I really think for us to be addressing a problem simply as a protective mechanism against competition is one matter, and frankly something that I oppose.

However, I would support legislation which addresses abuse and the use of various benefits that have the affect of hurting competition, but for us to simply say that we are not going to use prison labor because that is noncompetitive or does hurt competition, I think is a mistake, and I could not support that.

I do strongly feel that we need to be employing prisoners in any way that we possibly can, but we need to be very careful that the use of those prisoners, number one, is meaningful, and number two, does not unfairly abuse the competition and free enterprise system.

Thank you.

Chairman **Skelton**. I am not sure whether Mr. Poshard and Mr. Neal have military installations in their districts or not. I know that you other two gentlemen are familiar with the fact that Federal workers on a military installation may compete with a certain offering against private industry, and if they compete successfully, for whatever the bid is on, they get it. If they don't, then the private company would take over the barber shop, or the catering, the cooking, or whatever on that military installation.

It may be something parallel to that law would put all this in a competitive spirit, like the phrase leveling the playing field, and that is one thing we may want to explore a bit further.

Mr. **Poshard**. Mr. Chairman.

Mr. **Bilbray**. Mr. Chairman.

Chairman **Skelton**. Yes, Mr. Poshard.

Mr. **Poshard**. Go ahead.

Mr. **Bilbray**. I was just saying, in line with what you were saying is the thing that concerns me most is the fact that we don't know what the bids are.

If that share coming out of prison industries is $40 and the lowest bid is $50 from private industry, I can certainly see there is a benefit to the Government to take it at $40.

But when they don't know, and I think some of the figures we should see, if they are charging $60 for that chair and private industry can sell it at $50, there is something to be looked at there.

Chairman **Skelton**. We will have the prison industries people at a hearing in the near future, and I know these questions that are unanswered at the moment may be answered at that time.

Mr. **Poshard**. Mr. Chairman.

Chairman SKELTON. Mr. Poshard.

Mr. POSHARD. Forgive me for rising a second time, but I wanted to follow up on Mr. Lancaster's statements for just a moment.

When Mr. Collett made me aware of some of the problems that his company was experiencing, I had asked Director Quinlan to come over to our office. He was gracious enough to do so and to discuss the problems with me.

He understands that there is a problem here. I know he couldn't make it here today, but subsequent to our conversation with the Director, the staff began investigation of current law, and rules, and regulations, and in all fairness, it has been Congress that has promulgated the laws for more humane treatment of prisoners, for rehabilitation practices of prisoners, for out of our own sense of trying to grapple with the deficit problem with anything else, demanding that almost every Federal agency try to come up with some way to lessen the cost of their agency and their enterprise.

Therefore, in some ways, we have even encouraged, whether it be through the Corps of Engineers, or the National Forest Service, or the Bureau of Prisons, or whatever, we have encouraged these agencies to try to find a way to reduce the cost of carrying out the mandates which we have given them.

So, I don't want us to think that this is just being caused simply by the Federal prison system. It isn't. They are under certain mandates from Congress to do a lot of things that have caused this problem.

I think we need to explore through this committee and through possible legislation some very definitive ways of determining what constitutes reasonable share of any one particular market product, or what constitutes ways to diversify into other areas when one particular product area may be threatened by too great a share for prison industries.

Those are the kinds of things that we can do to even the playing field, so-to-speak, in all fairness from both sides of the issue.

Thank you, Mr. Chairman.

Chairman SKELTON. Thank you. Mr. Upton.

Mr. UPTON. Thank you, Mr. Chairman. I would like to follow up on Mr. Bilbray's questions with regards to standards, to all of the panelists.

What types of quality assurance procedures does UNICOR follow? What standards do they have, if any, and do they actually comply with them?

Ms. PERRY. I can speak on behalf of the furniture industry.

Our trade association has developed a series of standards relating to furniture products. There are six standards plus a flammability standard, and it is based on the different products—one for chairs, one for desks, that sort of thing.

There have been numerous requests to FPI to provide their data, test data that proves that they do, in fact, meet the standards.

As a manager of technical services for BIFMA, I have had an opportunity to review this information, and I can tell you from the information received, FPI does not meet industry standards.

They do random testing which our members are now allowed to do. They pick and choose the tests within a standard that they wish to test and then ignore other tests.

The test results that I have looked at have been for products that have not been identified as UNICOR products. They have been identified as products of other manufacturers, and, in fact, in the test results we looked at, it does not indicate anywhere that it is a UNICOR product.

I worked with Congressman Upton's office where we requested that the four furniture products be looked at, that they should provide the test data. They have not met the flammability requirements that our industry has established, and there is nothing that we can find in the law anywhere that says they must meet these standards.

The GSA requires all of our members to meet BIFMA standards and the flammability standards. To be able to sell to the Government, you must meet these standards, and then beyond it, in many cases.

You have to retest, in some cases annually, and in other cases, every 3 years. You have to have third-party certification on many of your tests which means you can't run the tests in your own test laboratory. You have to send them out to a test laboratory, and that third-party test laboratory has to be able to come in and look at your quality assurance program and certify that it is right.

Mr. UPTON. Does GSA simply give them a waiver then, with regard to standards?

Ms. PERRY. They don't even have to deal with GSA. I mean, a job doesn't even go out. If there is a job, it is taken by UNICOR. I mean, they don't even have to deal with GSA.

If you wanted to buy a desk today, you have to buy it from UNICOR, if they make that product. That's a super preference right there.

Mr. MERCADO-LLORENS. The statute, of course, and the implementing regulations of the statute, the regulations state that FPI meets quality standards.

Mr. UPTON. But that's all.

Mr. MERCADO-LLORENS. But that's all. Also, I have a letter here from the Department of the Energy to Mr. Kastenmeier indicating the Department of Energy's experience with the standards with respect to furniture produced by FPI.

If I may read briefly,

> The condition of the new furniture when received, even though crated, was unsatisfactory. Legs on desks were off and broken, and corners were bashed. Chairs came unglued in a matter of months, and wood finishes were not just matte, they were dull, and the tones were drab. In addition, on special orders, we have waited a year and a half for delivery that private industry would have filled in 3 months. Our experience with rehabilitation of furniture items is as follows: Chairs are returned with improperly sized dividers and bases and caster plates refastened with improperly sized screws.

Mr. MERCADO-LLORENS. I think one gets the picture.

Mr. POSHARD. Would the gentleman yield?

Mr. UPTON. Yes.

Mr. POSHARD. May I just ask a quick question? You are saying that Federal agencies that purchase from prison industries, all they are aware of is that this product meets quality standards, whatever that means, but they are not aware that it doesn't meet the fire or the safety standards? They are aware or they aren't?

Mr. Mercado-Llorens. Mr. Poshard, one more letter from the Army with respect to shoes indicated relative to safety that the soldiers were allergic to the dye used in the shoes.

There are no requirements that FPI meet quality standards, and, in fact, one of the specific recommendations of the Department of Energy, from Charles Tierney, Director of Administration, he says, "A more vigorous quality control standards program and more sensitivity to the requirements of ordering agencies would help improve services."

Mr. Poshard. But Mr. Mercado, you said that the statutes do say that they have to meet quality standards, right? Do quality standards mean something different for FPI than it means for private industry? That's what you're saying.

Mr. Mercado-Llorens. There is a mere conclusory statement, as I understand it, in the regulations that says FPI meet standards.

Ms. Perry. It doesn't say they have to. It says that they do. It says that they do.

Mr. Mercado-Llorens. The regulations presume that they meet standards. I have about 20 letters here that I would ask to be inserted into the permanent record of this hearing that indicates from the Department of the Army, Energy, Education, Federal Regulatory Commission, and others that they absolutely do not meet standards as to quality and timeliness of delivery and safety.

Chairman **Skelton.** Are you asking that those be put in the record at this point?

Mr. Mercado-Llorens. Absolutely.

[The letters may be found in the appendix with Mr. Mercado-Llorens' statement.]

Chairman **Skelton.** Without objection.

Mr. Poshard. I thank the gentleman for yielding.

Mr. Upton. Let me ask one final question. Mr. Collett, in your testimony you indicated that in the glovemaking business, there were some $15 million in business that was not being competitively bid. In fact, your price was $8.39 and the price that was quoted to the Government by FPI was $11.29. Not only was it not competitive, but the Government was being ripped off by $2.90 per pair of gloves.

This addresses the overall question. Should UNICOR be in the business of making a profit? I mean, clearly, they must be doing that without the overhead and the labor costs that you had indicated in your testimony. What is your sense with regard to the profitmaking?

Mr. Collett. I would seriously doubt, knowing how they operate, that they make a profit even with a lower price. Now, I don't know that, but we are certainly in it to make a profit, and we are having a difficult time doing it. We don't have that higher price advantage that they have.

Ms. Perry. Mr. Upton, I would like to point out that the term "profit" is misleading. We are not talking about outside money coming into the Federal Government here. We are talking about Federal Government money that is just going around in a circle.

What happens is that if the Department of Defense is paying more money for that chair than they would pay if they were getting it from the private sector, then, in fact, the Department of Defense is subsidizing the Bureau of Prisons and Federal Prison Industries.

It is not new money that is coming in. It is all taxpayers' money that is making the loop around. I am sure that agencies who are purchasing products at higher than private sector prices, would be very upset to know that they are, in fact, through this money subsidizing Federal Prison Industries.

Chairman **Skelton**. Minority counsel has a question.

Mr. **Rowe**. Thank you, Mr. Chairman. Just a quick question for the record. I was wondering if any of the witnesses believe that the Coble bill or any of the other bills before the House address the quality deficiencies that they've mentioned? Have they added to the substantive language?

Ms. **Perry**. Yes.

Mr. **Upton**. I remember, Mr. Jacobsen, you in your testimony had indicated your support for the Coble bill, and I think you also had, Mr. Lyons.

Mr. **Lyons**. Correct.

Mr. **Jacobsen**. Yes.

Chairman **Skelton**. I want to thank the committee members for coming today and participating. I really appreciate it. This has been one of our best hearings and one of our best attended hearings. I do thank them so much.

We thank the panelists, our witnesses. This has been more than food for thought. We have here a number of good notes, and we will go from here.

At a later date, we will have the prison industries come before the subcommittee. If you would care to come in at that date, feel free to contact counsel, and he will tell you when they are coming.

Thank you very much.

[Whereupon, at 10:30 a.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

Statement of
the Honorable Silvio O. Conte
Before the Subcommittee on Procurement, Tourism
and Rural Development
on Federal Prison Industries
August 1, 1990

Federal Prisons Industries (FPI or UNICOR) was mandated by Congress to train and employ inmates of Federal prisons. Those industries were intended to be labor intensive and to teach inmates marketable skills, a laudable goal. However, with the expanding prison population FPI has moved into more and more capital intensive areas. They currently have awards of about $350 million in government contracts and are projecting growth to about $620 million by 1992.

I am particularly concerned about the effect this expansion will have on Small Business. FPI's unlimited borrowing authority at below market rates, combined with its "super-preference" and its advantage in lower wages and exemption from Federal and state taxes or OSHA requirements threatens an almost monopolistic position in certain Federal procurements. Chapter 307, Section 4122 (b), Title 18 of the U.S. Code says, in part, that Federal Prison Industries shall "operate the prison shops (so) that no single private industry shall be forced to bear an undue burden of competition from the products of the prison workshops, and to reduce to a minimum competition with private industry or free labor". FPI's growth into an industry with a bigger share of federal procurement than Chrysler and its plans to enter new capital intensive industries clearly violates at least the spirit, if not the actual letter of Title 18.

UNICOR's recent proposal to go into the envelope business is a prime example of these violations. This is capital intensive industry requiring heavy automation and a highly trained and experienced work force. Additionally, with the super preference, current suppliers, like Westvaco of Springfield, Massachusetts, will not even be allowed to compete. At full operation and using the super preference UNICOR will simply take 7% of the government market, about $100 million per year. Companies like Westvaco aren't afraid to compete against FPI/UNICOR; they are afraid they won't even be given a chance to compete.

I have always been a strong advocate of competition in Federal contracting and I believe that making small business take a secondary position to FPI goes against the fundamental principles of our economy. It is time we levelled the playing field between FPI and our nation's businesses.

IKE SKELTON, MISSOURI
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101st Congress
United States House of Representatives
Committee on Small Business
Subcommittee on Procurement, Tourism, and
Rural Development
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OPENING STATEMENT

CHAIRMAN IKE SKELTON

FEDERAL PRISON INDUSTRIES AND SMALL BUSINESS

AUGUST 1, 1990

The Hearing will come to order. The issue before us today is the impact on small businesses of the Federal Prison Industries, Inc., a government corporation run by the Justice Department. This subcommittee has oversight jurisdiction over all federal programs which have an impact on small businesses. We have with us small business witnesses who each has a story to tell about the Federal Prison Industries system or "Unicor".

Let me first say that we will not hear the testimony today from representatives of the Unicor because our original intention was simply to make members of this subcommittee more familiar with the issues and the effect of government sponsored businesses on the small businesses with whom they compete. We decided at the beginning of this week that we had developed some questions that we would like to ask Unicor, and we sent them an invitation to be present to present testimony and answer questions. They were unable to be with us on such short notice but they have volunteered to answer any questions we may have or come before this panel at any time in the future to answer our questions.

In their absence, if I may, let me play something of a devil's advocate. On the surface, the Federal Prison Industries Programs would seem to be a godsend. The population in our prison system has grown enormously in the past decade as the drug wars have grown out of control. The thought that the prisoners could be kept busy making useful products for the government and thereby helping to pay the cost of their confinement is an appealing one. I have reviewed the requirements under the law, and they seem eminently reasonable. Indeed, I understand that just yesterday, the Board of the Federal Prison Industries reviewed the idea of getting into the shoe business and supplying shoes and boots for the federal government. When they reviewed the idea, as required by law, they decided that it was a bad idea because of the dramatic impact on the shoe industry that foreign imports and military cutbacks have already had. I think this is the correct result. It seems to me that this is the way that the law was designed to work.

Given that background, however, I have become aware recently that something is wrong. Zephyr Broom Company in Sedalia Missouri used to provide corn brooms to the federal government. They still make brooms but they tell me they don't even bother to bid on government work anymore because the prison industries have swept up all the contracts. The response from impacted businesses has become louder and louder and I suspect it is as a result of the rapid growth that must occur to keep the growing prison population.

We have with us a representative sampling of the businesses that are impacted by the Federal Prison Industries. The subcommittee wishes to thank Congressman Fred Upton, who requested that this subcommittee hear this issue and who is an original cosponsor of H.R. 4743, the Federal Industries Competition in Contracting Act introduced by our colleague, Howard Coble. Let me also acknowledge the strong interest and leadership on this issue taken by Congressman Glenn Poshard who has brought a number of cases to our attention. Before I recognize other members for opening remarks, I would like to submit the following items for inclusion in the record:

1. The response of the Director of Federal Prison Industries, J. Michael Quinlan to our invitation to be a witness.

2. The testimony submitted for the record of Maynard Benjamin, Representing the Envelope Manufacturers

3. A letter to this subcommittee with an attached letter to Secretary of Defense Cheney submitted by Lois. E. Bennett, the National President of the Council of Federal Interior Designers

4. A letter in comment from Eddie Bass, the President Signprint, a sign making company in Springfield, Missouri.

Let me also say that we have had many other requests to submit testimony for the record and that, without objection, the record will be held open for 10 days to receive such testimony. Further, any prepared remarks or testimony that the members or witnesses have will, without objection, be spread upon the record.

(Opening statements)

UFCW

TESTIMONY OF THE

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON PROCUREMENT, TOURISM AND RURAL DEVELOPMENT

August 1, 1990

Mr. Chairman, members of the committee, my name is Segundo Mercado-Llorens. I am the Director of Government Affairs for the United Food and Commercial Workers International Union.

The UFCW has 1.3 million members organized in some 700 local unions throughout the United States and Canada. The UFCW and its local unions have collective bargaining agreements with tens of thousands of employers throughout the food industry, including retail sales, meat packing, food processing, leather, fur, health, shoe manufacturing and other industries.

I am pleased to be here today to express the concern of various labor unions regarding prison work expansions into domestic industries such as shoes, apparel, textiles, and furniture.

I would also like to take this opportunity to thank you, Mr. Chairman, for your leadership in holding this oversight hearing.

Mr. Chairman, there are a number of unions whose members could be negatively impacted by new prison industries production in shoes, apparel, textiles, and furniture. This testimony will speak primarily to the concerns of a some of these: the International Ladies Garment Workers' Union, the Amalgamated Clothing and Textile Workers Union, the United Steelworkers of America, the United Brotherhood of Carpenters and Joiners of America and the UFCW.

Two basic issues should be addressed at the outset. These are:

William H. Wynn
International
President

Jerry Menapace
International
Secretary-Treasurer

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1. Our labor unions are not here to urge the abolition of Federal Prison Industries,Inc./UNICOR (FPI). There is value in ensuring that prisoners learn a useful skill and engage in meaningful productive work while incarcerated. What concerns us is the use of prison labor at taxpayer subsidized wages to displace American working men and women.

2. Whatever else one thinks of FPI, it is no small "mom and pop" operation. FPI's sales for FY 1989 totaled $360,582,472.00. It projects sales upwards of $600 million by the mid-1990s. As the saying goes, "This ain't baloney no matter how many ways you slice it!" This is big business. Moreover, it is big business with a government boost! By implementing regulation, FPI has been granted a so-called "super-preference" which restricts a contracting officer's authority to purchase products from sources other than FPI. As will be made clear by this testimony, this arrangement making FPI "the required source of supply" is indeed a "sweet deal."

These two points should help place this testimony in its proper context. Now, let me be more specific by addressing the significant commercial posture which FPI has assumed (or wishes to assume) in a variety of import-sensitive and other industries and which forms the foundation of our union's concerns.

FOOTWEAR

Until recently, the board of directors of FPI were considering a proposal to manufacture 300,000 units of footwear in the following categories: dress and casual boots, dress and casual shoes, work oxfords, and work shoes. If approved, FPI would have held a firm grip on 64 percent of the federal market in men's oxfords, 55 percent in combat boots, and 38 percent in safety boots and shoes, according to the Footwear Industry of America. In addition, FPI's market share would have been gained at a taxpayer subsidized wage of $1.00 per hour.

On July 31, 1990, the board of directors of FPI heard testimony on this proposed expansion. The FPI board decided not to enter the footwear market.

While this is an important step, nonetheless, the fact that FPI sought to expand into footwear demonstrates that there is a clear and present danger to this and other import-sensitive industries. And our unions believe this requires a legislative response. Such an expansion into footwear should never have been seriously considered given the footwear worker's virtual destruction over the last two decades at the hands of foreign imports.

The UFCW represents thousands of workers in the shoe industry across twelve states. The Amalgamated Clothing and Textile Workers Union (ACTWU) also has significant work force representation in footwear. Each has already been victimized by an egregious number of imports. The current import penetration level in footwear is 80.3 percent. Imports constitute an ever present Sword of Damoclese which (unlike the mythological threat which never drops) has already cut the employment lifeline for 250,000 workers since 1968. Seventy thousand workers lost their jobs in the period 1981-1989 alone. The footwear industry's unemployment rate -- now 10.5 percent -- is twice the national average.

The impact of imports on American workers has been like a slow death sentence. Over four hundred manufacturing plants have closed in the last decade. Just since January, 1989, 42 more plants have closed. The number of plant closures for 1990 already equals the total for all of last year.

What will be the effect of FPI's proposed manufacture of footwear?

Because the Defense Personnel Support Center (DPSC) has projected a 57 percent reduction in its military footwear purchases in the bids to be let in Spring 1991 from its average purchases for the period 1986-1989, the FPI entry as the "required source of supply" would have cut the federal footwear market available to the private sector by 80 percent.

The following examples illustrate the danger which FPI's proposed expansion represented to workers in the footwear industry.

THE BELLEVILLE SHOE MANUFACTURING COMPANY

On May 25, 1990, the Belleville Shoe Manufacturing Company, located in Belleville, Illinois, notified employees of its intent to permanently lay off 203 workers beginning July 25 of this year. This action was taken in response to the decline in DPSC purchases previously described.

According to Belleville Shoe's formal comment on FPI's then current plans: "if UNICOR enters the market at any level, it is highly uncertain whether we will be able to survive...."

The demise of Belleville Shoe would have serious "downstream" consequences. Among these are the following:

- o Increased Social and Economic Dislocation in East St. Louis, Illinois -- The Belleville Shoe Manufacturing Company is located near East St. Louis, Illinois, one of this country's most economically depressed areas.
- o Increased Minority and Handicapped Unemployment -- Many of Belleville Shoe's employees are minority and handicapped workers who are already disproportionately unemployed.
- o Increased Overall Unemployment -- Belleville Shoe already operates in a labor surplus area.

THE FREEMAN SHOE COMPANY

The Freeman Shoe Company, located in Beloit, Wisconsin, manufactures men's dress shoes, welt construction, and cement construction shoes. It currently produces 1,400 pair of Army, Air Force, and Navy shoes per day for sale at Armed Forces post exchanges. If Freeman loses the right to manufacture shoes for post exchanges, the result will be the layoff of approximately 125 employees and the closing of its cutting and fitting departments. The loss of government contract work could significantly impinge upon this company's ability to compete effectively in the market.

THE COVE SHOE COMPANY

The Cove Shoe Company employs 500 workers in Martinsburg, Pennsylvania. The entire population of Martinsburg is approximately 2,000. Cove Shoe Company is a significant part of Martinsburg's economy and is a key component of the economy of surrounding communities. Government contracts represent 10 percent of the company's work. A loss of government contract work to FPI could result in an immediate layoff of approximately 75 employees.

These are just a few examples of what FPI's proposed expansion into footwear would have meant for American workers.

Clearly, FPI should not be permitted to expand production of import-sensitive products.

FPI's proposal to enter into this import-sensitive industry occurs against the backdrop of a history of FPI inability to meet standards relating to quality and safety.

In a March, 1990 letter to Representative Robert W. Kastenmeier, Chairman of the House Subcommittee on Courts, Intellectual Property, and the Administration of Justice of the Committee on the Judiciary, the Department of the Army's Chief of Special Actions Branch, Congressional Inquiry Division, states the following in reference to FPI's prior production of shoes:

> "Most people cannot wear the shoes more than one or two hours a day due to aching feet and legs."

The author of the letter also notes:

> "Many people are allergic to the dye used in the shoes."

A March 23, 1990 letter from the Department of the Treasury to Representative Kastenmeier also noted that there were problems with shoes.

Clearly, FPI should at least be required to meet standards of quality and safety.

APPAREL AND TEXTILES

As stated at the outset of this testimony, FPI is big business. This is particularly evident in the area of apparel and textiles.

A look at FPI's FY 1989 sales report is instructive. It shows $52 million in sales in the Household Furnishings category which includes items such as towels, blankets, and tablecloths; $13,797,276.00 in the Clothing category; and $4 million in sales of Canvas/Cloth products such as curtains, canvas bags, and drop cloths.

For FY 1990, FPI sales figures (covering the period October 1, 1989 to March 31, 1990) continue to be impressive. To illustrate, drapery sales in the one category (numbered FSC 7230) which totaled $3,732,063.00 in FY 1989 were already at the $2,348,000.00 mark by the end of March 1990. At this pace, sales in this one category of draperies will top the $4.5 million mark for FY 1990.

Not bad for a "mom and pop" operation which has already cornered 38 percent of the federal drapery market.

But again, why are our unions concerned with FPI's growth in the apparel and textile area?

FPI's increased sales have placed a double "whammy" on apparel and textile workers. First, as with footwear, there is the matter that FPI production is done by cheap, captive labor. Second, FPI's invasion of these markets has occurred at a time of escalating imports.

American workers represented by the International Ladies Garment Workers' Union in 39 states and the Amalgamated Clothing and Textile Workers Union in 38 states total nearly one-half million people. They have been devastated by the 223.5 percent rise in apparel imports since 1973. Today the import-to-domestic production ratio is 60 percent. That is, apparel imports represent 60 percent of domestic consumption.

This encroachment of imports into the domestic apparel market has caused significant decreases in employment. Since 1980, the employment for production workers in apparel -- which is the locus of the vast majority of workers in the industry -- has dropped almost 20 percent. Since 1973, over one-third of the jobs in production have disappeared.

Almost 400,000 American workers have lost their jobs in the three industries -- apparel, textiles, and shoes -- in which these two unions have members. In the past twelve months alone, in these industries, 76,000 workers were forced to walk the unemployment line.

Yet, while law-abiding taxpaying workers in the apparel and textile industry bear witness to a loss of the American dream, criminals in FPI prisons have managed to capture an increasing share of the men's outer-wear market with a jump in FPI sales of 87 percent between 1988 and 1989.

The drop in employment in apparel and textiles has had a particular impact on minorities. After all, they constitute one-third of the industry's production work force. To illustrate, one drapery company operating out of Hartford, Connecticut has seen its all-minority production work force drop 62 percent since 1985, a time when FPI's drapery sales were less than one-third of their 1989 total.

To make matters worse, several years ago, despite underbidding FPI by $6,000.00, this same company was shocked to learn that FPI had been awarded a contract to provide draperies to Sheppard Air Force Base in Texas.

Clearly, FPI's "super preference" should be modified to ensure fairness in the procurement process.

It is certainly a bitter irony for American working men and women that FPI is permitted to maintain the advantage of a so-called "super preference" at the very moment when the emerging democracies of Eastern Europe are discovering and relishing the challenges and opportunities inherent in a free and open marketplace.

Quoting again from the Department of the Army's March, 1990 letter to Representative Kastenmeier, here is the Army's assessment of one of FPI's textile products -- draperies:

> "As to value, in some cases UNICOR's prices are higher than comparable items available on the open market or through competitive procedures; for example, draperies."

The Department of Education has also noted its concern relative to cost in a March, 1990 letter to Representative Kastenmeier. The Department's Office of Management writes:

> "UNICOR's prices are even less competitive when shipping costs are added to the catalog price."

Clearly, FPI, which is already advantaged by cheap, captive labor, should at least be required to sell their products at a fair market price -- something which it is not required to do under current law.

FURNITURE

FPI's invasion of the federal furniture market has been no less pernicious to the American worker. It has captured 23 percent of the federal office furniture market; it also increased its sales 14 percent last year, reaching a total of $80 million.

For the United Steel Workers of America and the United Brotherhood of Carpenters and Joiners of America, representing thousands of workers in the furniture industry across the country, FPI expansions in this area could present a serious future threat.

Employment data in the furniture and fixtures category during the period of February, 1989 to February, 1990 shows a decline of 12,900 jobs. In office furniture, there was a drop of 1,800 employees.

FPI's above-noted increase in business thus occurred in the face of an employment decline; it also happened despite its poor workmanship in furniture products. It is apparent that the increased sales were a direct result of FPI's "super preference."

According to the Department of Energy in a letter to Representative Kastenmeier dated February 16, 1990, DoE's Director of Administration expressed his view of the quality of FPI furniture products:

> "The condition of the new furniture when received, even though crated, was unsatisfactory. Legs on desks were often broken and corners were bashed; chairs came unglued in a matter of months, and wood finishes were not just matte, they were dull and the tones were drab."

DOE goes on to state the following with respect to timeliness of delivery:

> "In addition, on special orders we have waited a year and a half for delivery that private industry would have filled in three months..."

The National Security Agency's Central Security Service has also communicated to Representative Kastenmeier, in a letter dated March 20, 1990, its concern with FPI's tardy delivery. The author writes:

> "Perhaps the most significant concern we have in dealing with UNICOR is the extremely long lead time we encounter with our orders. In most cases, lead time from order placement to item receipt exceeds six months.... We must, therefore, order individual items on an as-required basis, and our customers must contend with long lead time delays."

Clearly, FPI should be required to meet standards relative to timeliness of delivery.

THE PRISON INDUSTRY ENHANCEMENT CERTIFICATION PROGRAM (P.I.E.)

The concern of many in labor relative to the expansion of prison work in import-sensitive industries and others, where prison production has garnered a significant share of the market, is not limited solely to FPI.

On June 28 of this year, the Senate by voice vote adopted an amendment to S.1970, the Senate's Omnibus Crime Bill, which would expand the Prison Industry Enhancement Certification Program ("P.I.E."). This amendment, co-sponsored by Senators Trent Lott and Jesse Helms, creates a federal P.I.E. program and expands the existing state P.I.E from 20 to 50 certified programs.

We believe there are several problems with respect to this amendment. These are:

1. Currently, federal prison labor product is limited for sale under the FPI/UNICOR program to federal government entities. The new federal P.I.E., however, would be permitted "to sell goods and services to federal, state and local governmental entities and to the public..." according to the authors of the amendment.

Thus, federal prison labor would have an interstate commerce marketing arm.

In accompanying legislative history (see "Congressional Record," June 28, 1990 at S9033) the parameters of this new federal P.I.E. are described as follows:

> "This new authority will mean the establishment of programs where Federal prison-made goods can be shipped and sold freely in interstate commerce.... This indeed is an important exception to the general prohibitions on prison-made goods."

From the perspective of the unions whose interests are sought to be addressed by this testimony here today, this clearly breaks new and threatening ground in terms of taxpayer subsidized competition with the jobs of American workers.

2. As with FPI, this new federal P.I.E. is mandated to target areas that are labor intensive. Astonishingly, it is partially justified by its authors on the grounds that the new federal P.I.E. would target what are already import-sensitive sectors. I quote from the "Congressional Record" (June 28, 1990 on page S9034) regarding the areas in which the federal P.I.E. is expected to establish work programs:

> "Examples that immediately come to mind include shoe manufacturing and clothing."

Again, hard working, law-abiding, taxpaying workers will be asked to subsidize the final destruction of their already-threatened livelihoods. I am sure this body will understand when I say that this amendment turns logic on its head and would thus fit in nicely as a lost chapter from some Orwellian novel.

For American working men and women, the threat is real and imminent. Already, plans are underway for a Tennessee state P.I.E. program to employ up to 700 prisoners in the production of shoes. If each inmate produces 100 pairs of shoes per year, that is a total of 700,000 pairs of shoes in just one state. A new federal P.I.E. will hardly reassure the employees of the Brown Shoe Company in Tennessee.

Nor would the creation of a Federal P.I.E. that targets apparel be reassuring to Tennessee's apparel workers who have experienced a 14 percent drop in employment over the last two decades.

If enacted, the Lott-Helms amendment would compound the current problem. It would force American working men and women to compete with criminals for scarce employment in a tight federal market at the national level, and at the state and local levels through sales to state and local government authorities and the general public.

From another perspective, a question should also be raised whether it is worthwhile, in any event, to train prisoners in jobs relating to sectors where there is declining opportunity. Doesn't this create expectations of future employability, upon completion of a jail sentence, that can never be fulfilled? It would seem far more effective to identify expanding sectors of the economy in which to train inmates for their post-institutional lives.

Finally, throughout this testimony, various recommendations have been made that would help correct the problems addressed here today. The fundamental step, of course, is to clearly proscribe FPI expansions:

a) that would result in the displacement of employed workers; or,

b) occur in sectors of the economy in which there is a surplus of available gainful labor.

Other steps are:

- FPI should not be allowed to expand production of import-sensitive products. This could be defined by examining rulings of the International Trade Commission over a five-year period that a particular industry has been injured by imports or has been subject to unfair trade practice(s), or where competition from imports reflects an average import-to-domestic production ratio of twenty-five percent or greater during that five-year "snapshot."
- FPI should be required to meet standards of quality and safety.
- FPI's "super preference" should be modified to ensure fairness in the procurement process.
- FPI should be required to sell their products at a fair market price.
- FPI should be required to meet agency requirements on timeliness of delivery and include the costs of delivery and installation in the overall price quoted for an FPI product.
- The current state P.I.E. program should not be reproduced on the federal level, thereby giving prison production an interstate commerce arm.

Each of the these steps can and should be taken by Congress.

I know that our unions look forward to working with you, Mr. Chairman, and with this committee, so that together we can meet the legitimate concerns of the American worker and find acceptable approaches to the matter of providing meaningful work in our prisons.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

RECEIVED
MAR 20 1990
Sub on Courts

MAR 13 1990

Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Intellectual Property
  and the Administration of Justice
Committee on the Judiciary
House of Representatives
Washington, DC 20515-6216

MAR 20 1990

Dear Mr. Chairman:

Your letter of inquiry dated January 27, 1990 to Ms. Susan Engeleiter, regarding the Small Business Administration's experience with UNICOR products, has been forwarded to me for reply.

In fiscal year 1989, the Small Business Administration (SBA) had requirements to avail itself of systems furniture provided by UNICOR for our District Offices in Jackson, Mississippi and Seattle, Washington. The total costs were $133,480.00 and $206,400.00 respectively. These are comparable to what would be expected for procurement from private firms. Additionally, product quality is similar to privately acquired products.

However, we believe there is substantial room for improvement in UNICOR's delivery schedule. For example, the workstations for the Jackson District Office took four to five months for delivery. The chair order was placed on September 1, 1989, and has not yet been shipped. By comparison, other private sector companies completed the delivery of comparable furniture orders in two months or less.

While the above describes SBA's experience, as a Federal agency conducting procurements in accordance with Federal Acquisition Regulations, it should not be inferred that SBA is endorsing the entire procurement process as it is associated with UNICOR. Specifically, it is not uncommon for SBA to hear objections from the small business community that UNICOR represents unfair competition in the Federal market. While formal complaints have not indicated an extensive and commonly experienced problem, SBA notes that the expansion of commercial capabilities in the prisons, combined with a trend to reduced procurement spending, may stimulate more dissatisfaction in the small business community. Those firms which object to UNICOR contend that contracts with the firms represent competition from a government-sponsored, untaxed organization which can pay artificially low wages. These firms also assert that there is no reasonable way for procuring officials to avoid assigning to UNICOR acquisitions which may be crucial to incumbent small business contractors. SBA believes that some system comparable to its own regulations governing the decisions on assignment of acquisitions to the 8(a) program should be considered as an appropriate remedy on behalf of these affected small businesses.

I hope this information is useful to you.

Sincerely,

Frank M. Ramos
Associate Deputy Administrator
for Management and Administration

NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

20 March 1990

RECEIVED
MAR 21 1990
Sub on Courts

The Honorable Robert W. Kastenmeier
Chairman, Subcommittee on Courts,
Intelligence Property, and the
Administration of Justice
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515-6216

Dear Chairman Kastenmeier:

Your letter of 12 February requested that we assess the degree to which the Federal Prison Industries' products and services meet the procurement needs of this Agency. Of the myriad items produced or supplied by UNICOR, we purchase only selected items of office furniture and computer worktables, and occasionally such incidental items as "No Smoking" signs. To the extent that we do business with UNICOR, the volume of that business has not been affected by the provisions of Public Law No. 100-690, Section 7096, and Section 4122 of Title 18, United States Code.

Over the past year, our major procures from UNICOR include items of walnut and oak office furniture totalling over $500,000, and computer terminal worktables totalling $37,000. Generally speaking, we consider the wooden office furniture fabricated by UNICOR to be equal in quality to similar items we purchase on the commercial market. We have not been as impressed with the quality of their computer terminal furniture. In the past, we procured several different sizes of terminal worktables. We have found, however, that the quality of construction of all but one particular size table was generally quite poor. Consultations with UNICOR representatives brought no substantial qualitative improvement. Consequently, we have limited our worktable procurement to a comparatively small number of one particular table model, the quality of which remains acceptable.

Perhaps the most significant concern we have in dealing with UNICOR is the extremely long lead time we encounter with our orders. In most cases, lead time from order placement to item receipt exceeds six months (GSA schedules cite 90-120 day lead times for furniture orders). Our warehouse space situation is such that we cannot afford to procure and store these items in bulk quantity against anticipated requirements for use. We must, therefore, order individual items on an as-required basis, and our customers must contend with long lead time delays.

Due to the selective nature of our dealings with UNICOR, we have no specific recommendations for improvements of their products, or additions to their product line. In terms of service, UNICOR offers a full line of products, but in many cases at prices well above those for comparable items on the open market. We would consider increasing our procures from UNICOR for certain items, if their prices were more competitive. Also, as we stated earlier, we are not satisfied with the long lead times we experience with UNICOR, and would like to see improvements in that area.

Very respectfully,

Bill Studeman

W. O. STUDEMAN
Vice Admiral, U.S. Navy
Director

DEPARTMENT OF DEFENSE

DEPARTMENT OF THE ARMY
OFFICE OF THE SECRETARY OF THE ARMY
WASHINGTON, DC 20310

OFFICE, CHIEF OF
LEGISLATIVE LIAISON

16 MAR 1990

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Sub on Courts

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Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Intellectual
Property, and the Administration of Justice
Committee on the Judiciary
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is a final reply to your recent letter to the Secretary of the Army requesting our assessment of how well UNICOR, the Federal Prison Industries Program, has met the Army's needs in regard to quality, timeliness, and value.

Several Army commands responded to our request for assessments and suggestions. Both the United States Army Troop Support Command and the United States Army Communications-Electronics Command reported excellent working relationships with the Electronics Division of UNICOR. The other commands indicated that the quality of the other products offered by UNICOR was generally good except for wooden furniture which was not always of good, durable quality. The pressed wood furniture does not hold up well and often comes apart when moved.

The United State Army Medical Research and Development Command stated that UNICOR's products were satisfactory except for safety shoes. Many people are allergic to the dye used in the shoes. Also, the padding and arch supports are not sufficient. Most people cannot wear the shoes more than one or two hours a day due to aching feet and legs.

As to value, in some cases UNICOR's prices are higher than comparable items available on the open market or through competitive procedures; for example, draperies. Overall, however, prices appear to be comparable to the open market, sometimes higher and sometimes lower.

The areas that most commands indicated needed improvements were lead time, delivery time and customer service. A list of the various commands' suggested improvements to current products and services, and a list of suggested new products and service items are attached.

I trust this information will assist you.

Sincerely,

Kathryn G Carlson

Kathryn G. Carlson
Lieutenant Colonel, U. S. Army
Chief, Special Actions Branch
Congressional Inquiry Division

Attachments

Suggested Improvements to Current Products and Services

1. Provide a full line catalog and price list, updated regularly.

2. Reinstate the quick-ship program for emergency needs.

3. Provide service for installation of metal pallet shelving and similar equipment.

4. Have representative set up a demonstration of new products as soon as they are on the market.

5. Reduce lead-time whenever possible. Grant a blanket waiver for local purchase of long delivery items.

6. Provide samples of drapery fabric and design to examine. The purchase of draperies is different and inefficient in some areas. It requires the proponent to select drapery material from a GSA Federal Supply Schedule. The GSA contractor then visits the site at a later time for measurements. UNICOR, in turn, purchases the drapery material from the GSA contractor and then schedules production of the draperies after material is received. This process results in UNICOR taking nine months for delivery. In addition, it is more costly than local purchase.

7. Match/cross reference items to National Stock Numbers used by DOD for flexibility in granting waivers.

8. Obtain firm prices. Prices "quoted" by UNICOR often change after award. This makes budgeting/funding difficult. Prices should be firm.

9. Provide warranties comparable to commercial manufacturers, i.e., mattresses. Other manufacturers offer seven, ten and fifteen-year warranties. UNICOR offers no warranty at the same or comparable price.

10. The desks and file cabinets made of pressvood are too heavy. They should be made of a lighter, more durable substance.

Enclosure 1

11. Some filing cabinets have short legs, which are placed too far in towards the center of the base, causing the cabinets when top loaded to tilt. Moving the legs out nearer the outside of the base has a stabilizing effect and reduces the danger of cabinet tilt.

12. While the ADP workstation is oriented to the extent a dropped keyboard is provided, additional design should include printer accommodations. Locks are provided on each piece, however, one key fits all locks. Suggest a series of locks be mixed in during production runs.

13. Provide timely response to discrepancy reports and action taken thereto.

14. Furnish an acknowledgment of the delivery order. The acknowledgment should furnish points of production by line item and anticipated shipping date. This would eliminate much frustration on the part of the end user, the receiving warehouse and the purchasing office involved.

Enclosure 1

Suggested New Product and Service Items

1. Add the following items to product line:

   - Lined leather gloves
   - Disposable vinyl gloves
   - Various size furnace/air handling equipment filters
   - Paper items
   - Free standing partitions with or without glass or glass substance
   - Bookcases with glass doors
   - Fort Campbell recommends UNICOR expand its capability to manufacture "Mobile-Flex" tents. This type tent has become increasingly popular with military units due to ease of transporting and erecting. Presently, there is one GSA contractor providing this type tent. The repair parts for this tent are not on contract and "sole-source" is required.
   - Fort Bragg suggests UNICOR should consider for production within the system all Institute of Heraldry items and rehabilitation contract items.

2. UNICOR might consider getting involved in producing repair parts for support of older/near-obsolescent equipment on military installations. It has become extremely difficult to obtain such parts in domestic markets. If UNICOR could obtain dyes/jigs and plant equipment to fabricate these repair parts, it might be possible to identify and develop a market.

Enclosure 2

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF MANAGEMENT
THE DEPUTY UNDER SECRETARY

The Honorable Robert W. Kastenmeier
Chairman, Subcommittee on Courts,
Intellectual Property, and the
Administration of Justice
Committee on the Judiciary
House of Representatives
Washington, DC 20515-6216

RECEIVED
APR 2 1990
Sub on Courts

Dear Mr. Kastenmeier:

Thank you for your letter of February 12 to Secretary Cavazos regarding the Federal Prison Industries UNICOR program. The Secretary has asked me to respond on his behalf.

The UNICOR products the Department has purchased are generally of good quality. However, we do have two concerns: timeliness and cost. It usually takes from 80 to 150 days after UNICOR receives an order until the furniture is delivered. Also, we often find the prices of furniture such as wooden desks, tables, bookcases, and ergonomic and stacking chairs to be less when purchased from the General Services Administration's (GSA) Federal Supply Service. UNICOR's prices are even less competitive when shipping costs are added to the catalog price. Most items available through GSA are shipped on an FOB destination basis.

UNICOR might increase its furniture sales if they could arrange with GSA to have their furniture pictured and described in a separate section of the FSS Supply Catalog. Selected items such as desks and chairs could also be made available to Federal agencies through the FSS Special Order Program. Agencies would become more aware of the UNICOR furniture that is available and would allow them to obtain selected items using the Federal Standard Requisitioning and Issue Procedures (FEDSTRIP) system, which is usually less expensive and time consuming than preparing a purchase order.

UNICOR could also consider having GSA include their products in the appropriate GSA schedule contracts for furniture. They might also explore contractual agreements with commercial furniture dealers, who would market UNICOR's System XXI Panel Systems Furniture and handle the design and installation work.

I hope you will find these suggestions helpful.

Sincerely,

Thomas E. Anfinson

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-4500

DEPARTMENT OF THE TREASURY
WASHINGTON

ASSISTANT SECRETARY

March 23, 1990

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Sub on Courts
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The Honorable Robert W. Kastenmeier
Chairman
Subcommittee on Courts, Intellectual
Property, and the Administration
of Justice
Committee on the Judiciary
House of Representatives
Washington, DC 20515-6219

Dear Mr. Chairman:

This responds to your February 12, 1990 letter to Secretary Brady which requested information about the Department of the Treasury's use of UNICOR, the Federal Prison Industries (FPI) program. Your subcommittee is interested in ways that the UNICOR program can be improved and expanded.

Enclosed is a summary of the Treasury bureaus' responses to questions you raised concerning the types and quality of products and services purchased through UNICOR, the difficulties we have had in working with UNICOR, and suggestions for improvements. Although UNICOR products received generally satisfactory ratings, all of our bureaus indicated that they had considerable problems with long lead times and late deliveries. Many also mentioned difficulties in learning about the status of their UNICOR orders.

I hope that the enclosed survey results will be helpful to you. If you have any questions or need further information on these matters, please contact Debra Sonderman in our Departmental Office of Procurement, 566-9616.

Sincerely,

Bryce L. Harlow
Assistant Secretary
(Legislative Affairs)

Enclosure

Department of the Treasury UNICOR Survey Responses

1. What are some of the products and services that you have purchased from UNICOR?

These include office furniture, eyeglasses, safety glasses, draperies, shelving, targets, signage, mattresses, bedspreads, towels, bookcases, shoes, safety shoes, eye protectors, leather and cloth gloves, brooms, metal cabinets and lockers.

2. How well have UNICOR products and services met your procurement needs?

Most respondents indicated that UNICOR products met their needs satisfactorily or very well. Several stated that quality and delivery problems caused UNICOR products to be unsuitable for them.

3. What is your assessment of the quality and value of UNICOR products and services?

The responses to this question varied considerably depending on the location of the using office. Most of those in the Washington, D.C. area responded that the quality and value are good to excellent, depending on the particular product. Outside of Washington, D.C., respondents mentioned problems with eyeglasses (81% rejection rate in Georgia), safety glasses (Colorado), and shoes (Pennsylvania). The offices in Colorado and Kentucky indicated that almost everything they receive from UNICOR is of poor quality.

4. Have UNICOR products and services been delivered on time?

Every respondent stated that this is a serious problem. Items which they order have very long lead times (often as long as six months) to begin with, and those delivery dates are rarely met. Several stated that it has taken as long as two years to have furniture delivered.

5. Have you had any difficulties working with UNICOR?

Most respondents indicated that their greatest difficulties were in getting delivery of the products they ordered. Other problems included difficulties in determining the status of orders, getting damaged items repaired or replaced, and fluctuations in shipping charges.

6. Have you had any experience with the new Congressionally-mandated process for expanding existing UNICOR product lines? If so, please offer your assessment of how that process has worked.

None of our bureaus has used the new process.

7. What suggestions do you have for improving the UNICOR procurement procedures?

o That products be shipped FOB destination, or that Government Bills of Lading be used to cover shipping charges;

o That a system or contact point be established to enable customers to find out quickly about the status of their orders;

o That a system to acknowledge and correct damages be established;

o That a UNICOR representative market their products and services to individual purchasing offices, by providing catalogs and other updated product information; and

o That the ordering process be changed to save time by allowing telephonic orders with confirming paperwork, or that the General Services Administration handle all of the administration of the UNICOR program, as they do for the Federal Supply Schedule program.

8. What are your suggestions for improving UNICOR's products?

Responses included shortening lead times, establishing a quality control and inspection system, improving the quality of materials used to make the products, making pricing more competitive, and including uncrating and set-up of furniture.

9. Are there any new products that UNICOR could produce which are currently difficult to obtain in domestic markets?

Suggestions include: uniforms, athletic clothing, seals, stamps, protective clothing, latex gloves, smoke detectors, ear protectors, drill bits, endmills, grinding wheels (especially diamond coated and carbide), carbide punches, punch plates and bushings, wooden supply cabinets, and modern-style light weight office furniture.

DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20350 1000

APR 13 1990

APR 16 1990

The Honorable Robert W. Kastenmeier
Chairman, Subcommittee on Courts,
Intellectual Property, and the
Administration of Justice
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515-6216

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APR 18 1990
Sub on Courts

Dear Mr. Chairman:

Thank you again for your letter of February 12, 1990, concerning the federal prison industries program (UNICOR). I am responding for Secretary Garrett.

We now have the information from our field contracting activities to answer your questions. Because of differences in location, proximity to UNICOR distribution points, and experience in dealing with UNICOR, their responses varied.

In general, all activities are receiving good quality products. Printing services, furniture, drapes, and cables are of the highest quality. But quality is sometimes inconsistent, depending on the product ordered. For example, one activity receives complaints concerning the quality of bookshelves.

Almost all our activities cited timeliness as a major problem. In comparison to the private sector, lead times are excessive. Many of our fleet support activities and overseas customers cannot accept 60 to 180 day production lead times. In addition to long lead times, many activities are also experiencing delinquent deliveries. However, Naval Supply Center, Jacksonville, is very happy with its just-in-time contract with UNICOR, which requires them to supply six contract items within a 72 hour delivery period. This contract has been in place for approximately 20 months.

Responses concerning value are mixed. Of the eight activities that specifically discussed it, three indicated that UNICOR's products are overpriced, four indicated that prices are comparable to private sector products, and one indicated that high prices are justified because product quality is equally high.

Difficulties in dealing with UNICOR include slow response to written requests for quotes and problems encountered when trying to contact a UNICOR representative for pricing information. One activity mentioned a problem with repeat "no-bids" for certain items, but UNICOR will not issue a blanket waiver for these items. This practice causes undue delays in the procurement process since UNICOR no longer issues verbal waivers. But overall, most activities reported little or no difficulty in dealing with UNICOR. In fact, one activity mentioned that employees of the furniture showroom in Washington, D.C., are courteous and prompt.

Our major field activities submitted the following list of suggestions to help improve the procurement process and enhance product quality:

- Implement an evaluation preference similar to one we use for small disadvantaged businesses, which would give UNICOR a reasonable competitive advantage while giving private sector companies the opportunity to compete.

- Increase marketing efforts by increasing distribution of latest catalogs and price lists. Consider using product displays and personal presentations or representative visits.

- Restructure pricing of transportation to a "pre-pay and add" basis so actual freight costs are paid. UNICOR charges a flat percentage of the total order price for delivery charges.

- Increase inventory levels to reduce long lead times.

- Implement a "quick-ship" program.

- Use an experienced furniture freight carrier to help reduce breakage during shipping.

- Offer an inexpensive line of furniture in addition to the more expensive lines now offered.

- Offer a wider selection of furniture and drapery products using more contemporary fabrics and colors.

- Offer new products such as connectors, clamp assemblies, collars, designation plates, cables, out-of-production circuit boards, and cotton lab coats. Offer road and ground maintenance services, and goods moving services.

Thank you for your interest in this matter. If we can be of future assistance please do not hesitate to contact us.

Sincerely,

Gerald A. Cann

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

FEB - 2 1990

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FEB 8 1990
Sub on Courts

Honorable Robert W. Kastenmeier
Chairman, Subcommittee on Courts,
Intellectual Property, and the
Administration of Justice
House of Representatives
Washington, DC 20515-6216

Dear Chairman Kastenmeier:

The Federal Energy Regulatory Commission has purchased furniture from UNICOR on a limited basis.

The Commission has found UNICOR wood furniture products to be durable. Upholstered furniture products procured from UNICOR by the Commission have generally been unsatisfactory, deteriorating to an unusable condition in less than two years.

Delivery times of UNICOR products have been poor. Frequently, products are not received until months past the promised delivery dates. Some improvement in delivery times has been experienced during the past year. Similarly, some improvement has been experienced in the past year with regard to inquiries about late deliveries, however, such information is still difficult to obtain from UNICOR.

It is respectfully suggested that UNICOR decrease the number of products it offers, so perhaps it could better manage production, resulting in improved delivery times.

Sincerely,

Kenneth F. Plumb

Kenneth F. Plumb
Executive Director

PREPARED TESTIMONY OF WILLIAM COLLETT

ON BEHALF OF NATIONWIDE GLOVE CO. INC

BEFORE THE

HOUSE COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON PROCUREMENT, TOURISM, AND RURAL DEVELOPMENT

ON

STATUTORY AMENDMENTS REGARDING

MARKET ENTRY AND MARKET SHARE EXPANSION

BY FEDERAL PRISON INDUSTRIES

AUGUST 1, 1990

Mr. Chairman, my name is William Collett. I am General Manager of Nationwide Glove Company. I must emphasize that I do not purport to speak for our entire industry although I feel they would very likely agree with this statement.

Nationwide Glove operates four manufacturing facilities with slightly over 200 employees. All of these plants are in Illinois, two in Harrisburg, one in Metropolis, and the fourth in Pontiac.

We produce a wide variety of cotton, leather palm and all leather gloves. Our 1989 sales were $5,855,000. Of this total $4,031,000, or 69%, represent sales to the Department of Defense and the General Services Administration. The balance of $1,824,000 represents sales to industrial accounts. As you can see from these figures, we are heavily dependent on government contract work.

You might feel that a prudent manufacturer would not structure his sales in this manner. Rather, he should make every attempt to increase his industrial business. This is most difficult to do. The simple fact is that over 70% of the industrial glove sales in the United States are gloves imported from, to name a few, People's Republic of China, Taiwan, Korea, Thailand, the Philippines, Sri Lanka, Pakistan and many other countries. The selling price of these imports are very often lower than just our labor and overhead costs. When we add our material costs we are hopelessly outclassed and have no hope of competing with these imports. I might add that the United States Postal Service also purchases large quantities of imported gloves. This does not help our situation.

The above is furnished as background to give an indication as to why government purchases are so very important to us and to the continuing operation of our company.

Before I get into the impact of Federal Prison Industries on our business I would like to point out that, media opinion to the contrary, the government contracts we have received over the past 30 years have been obtained only through the competitive bidding process and are firm fixed priced and, unlike some weapon system contracts, no cost escalation is allowed. Contracts have not been given to us because we are fine fellows or even good quality manufacturers, although we are. Competition for these contracts is fierce and it is not unusual to have 12 to 14 bidders vying for any one contract.

Over the past several years we have supplied hundreds of thousands of pairs of different types of gloves to the General Services Administration. This business has now been totally usurped by Federal Prison Industries. In the past few months I would estimate that over $15 million in contracts have been placed with FPI. None of this business was subjected to the competitive bidding process.

Over the past ten years we have been successful in obtaining contracts with GSA to supply gloves for use by the U.S. Forestry Service in their fire fighting efforts. We were aware that FPI was also receiving contracts for the same item. Last year, by mistake, we received a release against a contract held by FPI for forestry gloves that should have been sent to FPI at the Sandstone Correctional Institution. We were astounded to learn that FPI was charging GSA $11.29 per pair for the item. Our price, through the competitive bidding process, was $8.39 per pair. This meant that, in spite of their statement that they could be competitive, FPI was in actuality receiving a taxpayer subsidy. This is patently unfair. It is interesting to note that a couple of years ago I received a call from the manager of Sandstone's glove facility asking if they could come to our plant and learn how to make the gloves efficiently. For the record I refused the request. We consider FPI to be a competitor and we don't extend a helping hand to a competitor. We have, in fact, a firm policy of never having contact with any company that competes with us in government contract work.

The U.S. Forestry Service needs for 1990 are now being supplied by FPI along with 100% of GSA's other glove needs. This effectively removes in excess of $15 million of potential production from the domestic glove industry, a loss we can ill afford.

Until recently, at least to our knowledge, FPI had not been active in procurements by Defense Personnel Support Center in Philadelphia. In June a solicitation for 900000 pair of a cotton glove was issued by DPSC. We did a great deal of work in preparing a bid for this item only to be advised that FPI had exercised their prerogative and had the solicitation cancelled in order that they might produce the item in their facilities. This was done in spite of the fact that the solicitation was already "on the street". The money expended by DPSC preparing and issuing this solicitation was forfeited. We had planned to make an offer low enough on this solicitation to insure work for our cotton glove plant for the coming year. Now, unfortunately, we are facing the very real possibility of closing this facility. If this happens it will cause 60 people to go from working taxpayers to non-working tax users. It is our understanding, that FPI intends to take additional glove procurements from DPSC.

FPI claims that they are competitive with civilian producers based on their low labor cost. This is obviously misleading. Much more than labor cost is involved in producing a glove. We seriously doubt that a close scrutiny of FPI's actual cost of production, including among other things, administrative salaries, material usage and all the other factors a private company has to consider in their cost computation would show anything less than a loss on most of what FPI produces. This, in spite of the fact that they seem to be able to command higher selling prices than those available to competitive bidders. In that vein we strongly urge you to look into how FPI's selling prices are arrived at in order to show whether or not they are competitive or are they simply being subsidized by the taxpayers. If they use the highest price offered on a solicitation as a bench mark this is unfair. Only the lowest price offered should be used to determine whether or not they are truly competitive, not the highest.

We have no quarrel with FPI's desire to provide inmates with meaningful work. Instilling a work ethic is a laudable goal even though we find it ridiculous to think that any released inmate is going to come to work for us and sew gloves. What we do quarrel with is the growth of FPI into a $600 million corporation at the expence of private business, most of it by definition, small in size. We do not feel that this was the intent of the 1934 legislation. We are certain that if FPI's activities were affecting large corporations changes would have already been made. Unfortunately unorganized and diverse small businesses generally do not have the resources required to mount a concerted effort to change this kind of situation. We must rely on our elected representatives for help in addressing what is an obviously unfair and threatening situation. If business operated in the manner that FPI is now allowed to operate, antitrust suits would fill our court system.

Mr. Chairman, we, like any taxpayer are delighted with the reductions that are and will continue to take place in the defense budget. I direct your attention to exhibits A and B attached to this statement. This reduction is surely going to make our situation difficult. This would not be so traumatic if FPI was kept out of the glove business or, at the very least, restricted in their activities by some type of a quota system. If such a quota system is used then percentages should be arrived at based on government purchases only, not on total domestic glove sales. Using total domestic glove sales, which includes the dollar value of imports, would be an unfair way of determining a percentage or quota.

Our industry has shrunk dramatically in the past 20 years due to the vast influx of imports. If FPI is allowed to continue unfettered then there is a very good chance that the glove industry will cease to exist or at the very least, become so small that in a national emergency sufficient quantities of gloves will simply not be available. Surely, in a national emergency the government would not wish to rely on Federal Prison Industries for badly needed hand protection.

Our industry is an employment opportunity for the undereducated and minorities. You don't need a high school diploma to sew a glove. Speaking strictly for Nationwide Glove I can assure you that if FPI is not restrained in their activities, the future of our corporation is in jeopardy. As a matter of record, we have already closed a plant in Gibson City, Illinois due to lack of work. If we have to close any of our other operations I would be happy to have one or more of you committee members drop by and explain to our employees why their jobs have been sacrificed in order to maintain the vast bureaucracy of Federal Prison Industries. We urge and beseech you to correct this inequity. We can in no way compete with the vast resources available to Federal Prison Industries.

Thank you very much for the time and courtesy extended to me.

Depart
apparel contractors on cutbacks

Military apparel contractors have been told to focus on producing goods for the commerical market, in the face of cutbacks in defense spending

DNR, an apparel industry trade paper, reported that Defense Department officials advised contractors at a recent meeting that the future of the military apparel business appears "bleak." Dennis Dudek, chief of production for military apparel at the Defense Logistics Agency's Personnel Support Center, told *DNR* that he had warned the manufacturers "that some of their contracts might not be renewed, or they would have to be postponed. We told them that we would still have a partnership with them, but that realistically, they should look ... more toward the commercial area."

Which contracts are not renewed depends in large measure on the type of clothing an individual manufacturer produces. *DNR* quoted Dudek as saying that the government is "going to have to stick with basic-type apparel and reduce to eliminate the quantity for exotic apparel," such as foul weather gear made of Gore-Tex.

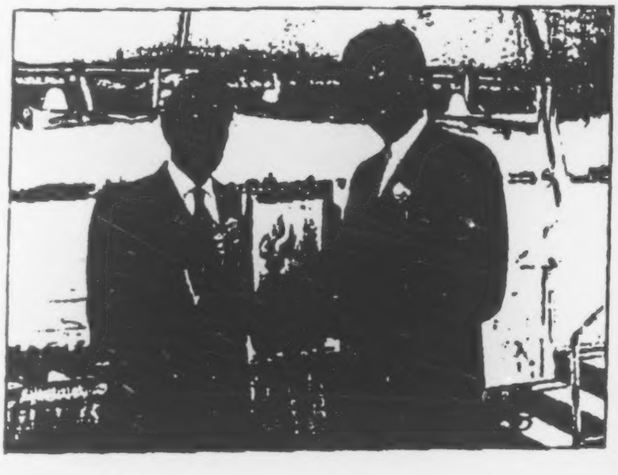
Dudek said dress trousers and BDUs are also likely to be scaled back as the nation's fighting force diminishes over the 1990s. As a measure of how the budget for military appeal is falling, the clothing budget fell off slightly to $1.2 billion in 1988 from $1.3 billion in 1987, but declined by 25 percent to $900 million last year.

The Defense Logistics Agency's larger suppliers—Tultex and Van Heusen among them—can more easily withstand the loss of government contracts, however lucrative such contracts are. But smaller suppliers, many of whom depend on the military for much of their business, will be hard-pressed to come up with substitute customers, and many could wind up going under, *DNR* reported.

"It is a little premature to assess the effect that (cutbacks) will have on us," Lanier Clothes' Joe Thompson told *DNR*. "It depends on what the Defense Department decides that it needs."

As an indicator of what the Defense Department will be needing in the 1990s, Secretary of Defense Dick Cheney announced in late June his plans to cut back the military by 25 percent over the next five years. The cutbacks Cheney proposed are larger than those proposed by the individual armed services, and smaller than those desired by Congressional leaders.

Under Cheney's proposed cutbacks, the strength of the Army would diminish from 744,000 troops today to 520,000 by 1995. The Navy would be cut back from 591,000 to 501,000, while the Air Force would drop from 545,000 troops to 466,000 and the Marines would lose 49,000 troops, for a 1995 figure of 148,000. ☐



Torch of Liberty

J. Nicholas Hahn (left), president and CEO of Cotton Incorporated, received the 1990 Torch of Liberty award from the Anti-Defamation League's Textile Division. At right is Ira B. Livingston, U.S. marketing vice president for Cotton Inc.

EXHIBIT "A"

THIS WAS TAKEN FROM ARMY, NAVY & OUTDOOR MERCHANDISER DATED JULY 15, 1990

SE LOGISTICS AGENCY
E PERSONNEL SUPPORT CENTER
2800 SOUTH 20TH STREET
PO BOX 8419
PHILADELPHIA, PENNSYLVANIA 19101-8419

IN REPLY REFER TO DPSC-F

JUL 16 1990

To Our Valued Suppliers

Ladies and Gentlemen:

I am sure you are aware of the significant reductions in spending that the Department of Defense has mandated for its components and the related effort to achieve substantial inventory reductions. The initial impact of these actions has been a drop in Clothing and Textile obligation authority from $900 million for Fiscal Year 1989 to approximately $700 million for Fiscal Year 1990. We anticipate that Fiscal Year 1991 spending will decrease even further and we will be buying between $500 million and $600 million of supplies during that period.

To operate effectively within these monetary constraints, we have been obliged to evaluate Service requirements and available resources to assure the highest level of support for our troops. The effect on you, our suppliers and potential suppliers, will be fewer solicitations for smaller quantities, delayed procurements and extended delivery schedules. We have been forced to depart significantly from the acquisition plan we previously provided to you. At the same time, we will need increased flexibility from you to assure timely delivery of needed products.

We have enclosed a list of our anticipated procurements over $1 million for the balance of this fiscal year. Our acquisition plan for fiscal year 1991, which will be published by 30 September 1990, will reflect the reduced level of activity we currently expect. This will give you an opportunity to balance production and load lines with non-military work.

The portion of industry involved in the manufacture of military clothing and textile products is an integral factor in maintaining support of our Armed Forces. We recognize that these reductions have a serious impact on your business. If you have any questions about a specific procurement, please contact the responsible Contracting Officer. Inquiries of a general nature may be directed to our Office of Source Development at 1-800-US-CLOTH.

Sincerely,

T H Metzger

T. H. METZGER
Colonel, USMC
Director, Clothing & Textiles

EXHIBIT "B"

BIFMA
The Business and Institutional Furniture Manufacturer's Association
2335 Burton S.E.
Grand Rapids, Michigan 49506
(616) 243-1681
FAX (616) 243-1011

STATEMENT OF

VAN JACOBSEN
PRESIDENT
PANEL CONCEPTS, L.P.
on behalf of the
BUSINESS AND INSTITUTIONAL FURNITURE
MANUFACTURER'S ASSOCIATION

before
THE UNITED STATES HOUSE OF REPRESENTATIVES
SMALL BUSINESS COMMITTEE
SUBCOMMITTEE ON
PROCUREMENT, TOURISM AND RURAL DEVELOPMENT

AUGUST 1, 1990

Mr. Chairman and Members of the Subcommittee:

Good morning. My name is Van Jacobsen, president of Panel Concepts, L.P., a manufacturer of business and office furniture. I am also here as President of BIFMA, the Business and Institutional Furniture Manufacturer's Association, a nationwide trade organization made up of the manufacturers of office, business and institutional furniture and their suppliers.

We are here today to voice our industry's frustration with Federal Prison Industries' (UNICOR) rapid growth in the federal furniture market.

Let me begin by explaining what my company must do to sell to the federal government. First, we must do all of the things any private sector manufacturer must do. We pay our employees a fair wage, based on the industry we are in and the community in which we live. We borrow money at above prime rate to pay for buildings, equipment and machinery. We pay federal, state and local taxes: income, property and social security. We provide our workers with unemployment and worker's compensation coverage, as well as a pension program for their retirement. We meet the requirements set by the Occupational Safety and Health Administration and the Environmental Protection Agency, both at the federal level and their state and local equivalent. Our products meet the most current industry standards for safety and performance. Our pricing must be competitive, as well as our quality, serviceability and delivery.

In addition to the basics, the federal government requires that we go beyond industry standards and perform additional tests on our products. We must meet requirements set by Underwriters Laboratories, the American Society for Testing and Materials (ASTM), and other standard-setting groups, and our test results and testing facilities must be periodically inspected and certified by a third party testing laboratory.

Our pricing must be deeply discounted to sell to the Federal Government, with the deepest discounts going to the largest projects. Just the cost of preparing a bid can be high, especially in the case of a panel systems project. To sell panel systems, complete layouts of the facilities, referred to as space plans, must be made to determine the number and type of products needed. This is an expensive undertaking, but one that is considered "part of doing business."

Our contact with government procurement agencies is restricted. We are prohibited from paying the expenses to bring government personnel into our factories or showrooms, nor can we even buy their lunch.

And, most importantly, our personnel and our products must be the best, for it is only through our ability to compete that we will continue to have customers return with repeat business. This is a true incentive to ensure that our quality, service, delivery, and warranty are what our customer expects.

But Federal Prison Industries, Inc., a government sponsored "business" has none of these requirements. The wages they pay amount to little more than dollars a day; they pay no taxes, no social security, no unemployment and no workers compensation. They receive part of their facilities, equipment and machinery from government excess, and, if they must borrow money, the Omnibus Drug Bill of 1988 gave them the authority to borrow from the U.S. Treasury at less than prime rate. They do not have to deal with OSHA and the EPA. They are not required to meet industry standards or the additional requirements set by federal agencies. Their pricing is set by the ambiguous term "current market price," and they have recently announced that if they prepare a space plan and it is not used, the requesting agency will be required to pay for the cost of preparing the plan.

FPI is also not prohibited from influencing federal procurement personnel. When FPI received authority from Congress to borrow from the U.S. Treasury, Congress was told that this money was needed to finance prison industries construction. Now FPI is using its money to entertain U.S. Government contracting officials. I have a copy of a letter from FPI to Air Force procurement and design officials located in Hawaii, inviting them to visit prison manufacturing facilities in Minnesota and Kansas. The letter graciously provides a UNICOR account number to bill for expenses incurred for these visits. I will provide this letter for the record.

As a manufacturer I am appalled at what would be construed as unethical conduct if it had been done by a private contractor. As a taxpayer I am incensed at this blatant misuse of taxpayer money. It is with good reason that private companies and procurement officials are prohibited from any such activity, as it gives the appearance of favoritism.

What makes this even more outlandish is that FPI has no need to do this. FPI has a congressionally mandated "superpreference." By law, federal agencies must "purchase at not to exceed current market prices, such products [from Federal Prison Industries] as meet their requirements and may be available." FPI regulations have created a mandatory preference compelling federal agencies to buy from FPI regardless of its product's price, availability, quality, or impact on private contractors and the workers they employ. They have no competition, yet they have a very aggressive marketing program.

It is this superpreference which removes FPI's incentive to provide the same level of quality, service, delivery, and warranty that private sector companies do. It is also this superpreference that has changed what was originally a program to employ federal prison inmates, into a federal program that is losing control. Federal Prison Industries, Inc. was originally established in 1934 as a means to employ federal prisoners; keeping them occupied and under control. This was a noble goal, and one which we endorse. FPI's mandate, and subsequent legislation passed as part of the Omnibus Drug Bill of 1988, states that FPI shall employ the greatest number of inmates as is reasonably possible. The purpose of the Federal Prison Industries program was, and is, to keep prisoners occupied and out of trouble.

However, lately there appears to be another agenda for FPI as evidenced by their recent actions. Their goal seems to have shifted from employing inmates to becoming sole source supplier to the federal government. Beyond bringing procurement officials into their facilities, they have sponsored Trade Exhibitions, again at taxpayers' expense. Their plans for expansion are ambitious, yet through their superpreference they have so much business that they subcontract half of it out. This is in direct conflict with their congressional mandate to employ the most inmates possible.

FPI is big business. It currently projects its sales of all products to total $620 million by 1992. To put that in perspective, FPI will be a Fortune 500 company by that year, if not before! In office furniture sales it would be in the top ten percent of BIFMA's membership. As evidenced by FPI's slow progress in expanding into other labor intensive, non-import sensitive products, and its rapidly increasing sales of office furniture, its further growth will most certainly be at the expense of our industry.

FPI is required to operate so as to avoid capturing more than a reasonable share of the federal market for any specific product, and reduce to a minimum its competition with private industry and free labor. However, there is no definition of "reasonable share of the market." FPI's sales of furniture increased 14% last year, a year in which the rest of our industry was stagnant. Our analysis indicates that FPI already has 23% of the federal market for those office furniture products that it produces. We believe that this is an excessive hardship on our industry, and is in direct contradiction to FPI's congressional mandate "that (FPI) not unduly burden any one private industry."

With all of FPI's advantage, they should be able to compete evenly with private industry companies. **Therefore, we ask that FPI's superpreference be removed.** Not only would this provide needed relief to those industries such as ours which bear the brunt of FPI's rapid expansion, it would provide the needed incentive to FPI to be competitive in pricing, quality, delivery and serviceability.

We believe that FPI can expand the number of inmates employed without increasing their share of federal market sales. Their operations can be made more labor intensive; they can expand into those service areas that have felt the decline in the number of young workers available; and they must find new industries and activities to go into which are labor intensive and not at the expense of the corporate tax base.

As an industry severely affected by Federal Prison Industries, we are seeking legislative relief from this rapidly expanding federal program. Congressman Coble's bill, H.R. 4347 in the House of Representatives, and Senator Dixon's bill in the Senate, will help industry by restricting FPI's use of its superpreference; have all of Federal Prison Industries' products meet the same industry and governmental standards that private sector companies must meet, thus ensuring that their quality, safety and durability are equal to the private sector products; sell their products at a defined fair market price; have FPI report its sales volume and market share; and have the purchase of FPI's products reported to the Federal Procurement Data Center. We ask for your support of this legislation.

Thank you for your consideration. I would be pleased to respond to any questions the Committee may have at this time.

* * *

U.S. Department of Justice
UNICOR
Federal Prison Industries, Inc.
Corporate Marketing
Washington, D.C. 20534

March 20, 1990

Lt. Colonel Edward Reaves
Director
15th ABW/LGCR
Hickam AFB, HI 96838-5000

Dear Colonel Reaves:

On behalf of UNICOR, Federal Prison Industries, I would like to invite you, or your designee, plus Major Tom Krusemark, and AF Designer Sandy Warner to visit our Systems Furniture manufacturing facility at the Federal Correctional Institution, Duluth, MN. At the same time, we would like you to visit our furniture and mattress factories located at the U.S. Penitentiary Leavenworth, KS. We believe these visits would be beneficial to Air Force personnel who are involved in both the design and procurement of furnishings for PACAF furniture projects.

You are hereby authorized to use the following fund citations to bill UNICOR for expenses incurred for these visits.

Fund Citation: 15X4500
ALC: 1080001

Billing should be as follows:

Federal Prison Industries - Resources Division
Attn: Jim Allen
320 1st St. N.W.
Washington, DC 20534

As per my discussion with Major Krusemark, we hope it will be possible for your group to make this trip the later part of May. I would appreciate your letting me know, as soon as possible, what dates would be convenient for you so I may make the necessary arrangements.

Very Truly Yours,

Bill Valentine
Manager, Corporate Sales

cc: Jim Allen, Resources
Stan Wexler, Director, Corporate Marketing Division

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Missouri Correctional Enterprises

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P.O. Box 236, Jefferson City, MO 65102

Phone Jerry Mick, Myrt Opie, Eddie Lister, Tony Rackers or Parker Ralston at

1-800-392-8486 or 314-751-6663
FAX 314-751-9197

Mr. Chairman and Members of the Subcommittee:

My name is John C. Lyons, President of American Space Planners, Inc., an office furniture dealer in Baltimore, Maryland. I am here as a representative for BIFMA, the Business and Institutional Furniture Manufacturers Association, a nationwide trade organization formed by the manufacturers of office, business, and institutional furniture and their suppliers.

I am also addressing your Committee on behalf of the independent office furniture dealer. Office furniture dealers, with few exceptions, are privately owned and operated small businesses. Many of these small businesses are owned and operated by minorities. The UNICOR furniture manufacturing and marketing division of Federal Prison Industries is severely impacting our industry. Government mandated "superpreference" status for UNICOR is unfair competition, since by law, no dealer may compete with UNICOR.

Our firm is neither small nor large, but is rather average with thirty (30) employees. In order to compete, we must staff our company with degreed interior designers, project managers, and installation crews, as well as general office staff. If UNICOR expands its marketshare of the furniture business and does not lose its "superpreference" status, we may be forced to layoff almost half of our staff. We are not the exception, we are the rule.

Why am I here? I am not here to ask for a government "bailout" of my business or my industry. I am not here to ask for government guaranteed business. I am not here to ask the government to assure our firm enough business to survive and put more people to work. I am here only to ask that we be allowed to fairly compete in the federal marketplace. No bailout, no loans, no money, no guarantees, only the opportunity to fairly compete. Our company has grown in part because we service our government accounts with the same degree of quality service that we offer our commercial accounts in the private sector. It is ironic that by dedicating ourselves to providing high-quality goods and services to the federal workers to improve their comfort and productivity, our firm finds itself threatened by the workers' employer--our government!

There is another irony in this equation. Our suppliers must meet the highest standards for safety within their products. Through BIFMA, these standards are self-imposed and total compliance is required. European and far Eastern competition has had little impact on the office furniture industry. The reasons are many;

great sources of natural resources coupled with massive investments in futuristic manufacturing equipment driven by highly sophisticated computer software and an extremely competitive marketplace has allowed steady growth with little impact from overseas influence. The irony is that with an industry that is solely responsible for its own steady growth and stability, an industry that offshore interest could not kill, is now in danger of being gravely wounded by its own government! Where is the logic?

No person can argue with the positive aspects of prison labor. Why can't we use prison labor to solve some of the horrendous social problems that helped to drive many of these people to commit crimes? It makes sense and only helps our country! We need creativity! We need logic!

I will not bore you with the details of my personal plight with our small office furniture business. The chapter and verse of orders lost, red ink, and unnecessary hardship forced upon the families of terminated workers, should be evident to anyone hearing this testimony. I am not here to beg nor to plead for fairness for my firm, or for fairness for the thousands of other small businessees like ours. Fair is far too subjective to use in this instance. People throughout the world work for years to send their children to our country. They do so because they want for their children what supposedly was mine by birthright, opportunity! All we are asking for is the opportunity to compete where we were once not only welcomed, but sought after as a conscientious supplier in the federal marketplace.

Our small business, with a goodly number of minority participation, ask that you support Congressman Coble's Bill, H.R.4347 in the House of Representatives, and Senator Dixon's Bill in the Senate. Restricted use of UNICOR's "superpreference," together with limitations on its growth in specific industries is the beginning of a return to a truly competitive open market. The benefits of such action are many:

* Lower pricing to the federal government.
* High-quality goods and services.
* Increased tax base.
* Reduce unemployment.
* Allow Federal Prison Industries to utilize prison labor to everyones' benefit.

We are suggesting that the evidence supports such action as a positive move in which everyone wins.

I thank you for your consideration while asking your support for H.R.4347. I will be pleased to respond to any questions the Committee may have.

* * * *

Coalition for Government Procurement

1990 M Street, N.W. Suite 400
Washington, D.C. 20036
(202) 331-0975

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August 6, 1990

The Honorable Glenn Poshard
U. S. House of Representatives
1229 Longworth HOB
Washington, DC 20515

Dear Congressman Poshard:

During the August 1st Small Business Procurement Subcommittee hearing you asked one of the witnesses what was considered a "fair market share" of the federal marketplace for Federal Prison Industries in a given product. Though none of the witnesses had a firm answer for you, I think I can provide one.

The Coalition for Government Procurement is made up of over 100 businesses that sell commercial products to the federal government. Many of our members are furniture manufacturers impacted by FPI. We also have as our members, though, wire harness makers and drapery producers who are adversely impacted by FPI. As a result of membership interest, the Coalition has devoted a fair amount of study to this issue.

Federal Prison Industry officials have stated publicly on several occasions that they do not seek to take more than 15% of federal market share for any one product. It would seem from these publicly stated assurances that 15% was as high as FPI would like to go. In countless industries, however, FPI's federal market share far exceeds this standard. In furniture, for example, FPI has seized 25% of the overall federal market. In draperies and some apparel items, the figure is in excess of 30%, almost one-third of federal purchases! As you can see, FPI in this instance has said one thing while doing something completely different.

In a letter to Richard Seiter, Director of Federal Prison Industries, the Coalition stated that a 15% share of the federal market for a given product was reasonable for most areas. Although we hesitate to apply this standard across the board for all FPI-produced products, this standard seems fair and reasonable for many goods.

...representing commercial product suppliers to the federal government.

The Honorable Glenn Poshard
August 6, 1990
Page Two

The Coalition strongly supports Congressman Coble's bill in the House and Senator Dixon's efforts in the Senate to force FPI to compete more fairly with private industry. We do not seek to put FPI out of business. It is unfortunate that they do not feel the same way about private industries with which they compete.

Thank you for your interest in this issue. If the Coalition or I can be of any further assistance, please feel free to call.

Sincerely,

Edward L. Allen

Edward L. Allen
Executive Director

cc: Congressman Ike Skelton

COUNCIL
of
FEDERAL
INTERIOR
DESIGNERS

July 30, 1990

Congressman Ike Skelton
Mr. Russell Orban
House Small Business Committee
Sub-Committee on Procurement, Tourism,
  and Rural Development
B-363 Rayburn House Office Building
Washington, DC 20515

Dear Sirs:

The Council of Federal Interior Designers (CFID) would like to pass along some information which may be of use in regards to your current hearings on the Federal Prison Industries (FPI). Enclosed are copies of our letter sent last year to Defense Secretary Cheney and his response.

In addition, enclosed are two charts which compare the cost of FPI furniture systems with like products from the Federal Supply Schedule. Both these charts were prepared within the last two years for actual jobs in which CFID members were involved. Comparison A shows FPI pricing directly from their catalog; Comparison B was developed from an actual price quote received from FPI. In both examples, the FPI product is significantly more expensive.

We would also like to reiterate our concern that FPI products do not meet industry fire and safety standards. As designers concerned with the health, safety, and welfare of thousands of federal workers and the responsible utilization of taxpayer dollars, we find this situation intolerable. We would propose that FPI be required to meet industry standards, submit their products for Federal Supply Service Evaluations, and be price competitive.

CFID is a private non-profit professional organization of interior designers employed by the federal government. We represent approximately 50% of all federal designers, in over twenty-five different agencies. If we can be of any further assistance, please call me on (202) 708-9170.

Sincerely,

Lois E. Bennett

Lois E. Bennett, CFID
National President

Enclosures

P.O. Box 27565
Washington, DC 20038

COUNCIL
of
FEDERAL
INTERIOR
DESIGNERS

October 2, 1989

The Honorable Richard Cheney
Secretary of Defense
Office of the Secretary
Room 3E880 - Pentagon
Washington, D.C. 20301-0000

Dear Secretary Cheney:

The Council of Federal Interior Designers (CFID), which represents several design agents (i.e. Army, Navy, Air Force, Marine Corps, etc.) within the Department of Defense, would like to inform you of several areas of concerns we have with products specified and procured from Federal Prison Industries (UNICOR).

1. Cost - In most cases it has been our experience that the cost of a product from Federal Prison Industries far exceeds the cost of a similar product from those manufacturers listed on the General Services Administration (GSA) schedules.

2. Quality - The quality of UNICOR products do not meet industry standards (ANSI/BIFMA) as far as safety and fire issues are concerned. Although Federal Prison Industries has assured inquirers that their product meets these requirements, no test data has been submitted to support their claim. In addition, Federal Prison Industries has not provided any evidence that their product is either UL listed or meets the National Electric Code.

At a time of limited resources and in response to the Department of Defense's Total Quality Management, we believe these areas should be of great concern not only to federal interior designers, but to all individuals responsible for the effective use of taxpayers' money.

We understand the Dixon Amendment to the 1990 Defense Authorization Bill, which would require that UNICOR compete on an equal basis with private industry for federal government business relating to defense procurement, is up for approval. We would appreciate your careful consideration in supporting the amendment.

Sincerely,

Katy L. Baxter

Kathy L. Baxter, CFID
National President

cc: Senator Alan J. Dixon
Congresswoman Pat Schroeder

P.O. Box 27565
Washington, DC 20038

OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION
WASHINGTON, DC 20301-3061

OFFICE OF SMALL
BUSINESS AND SMALL
DISADVANTAGED
BUSINESS UTILIZATION

25 OCT 1989

Ms. Kathy L. Baxter
National President
Council of Federal Interior Designers
P.O. Box 27565
Washington, D.C. 20038

Dear Ms. Baxter:

Please refer to your letter of October 2, 1989 to the Secretary of Defense, Department of Defense (DoD), regarding your concerns with products specified and procured from the Federal Prison Industries (FPI). You report that the products furnished by FPI are more costly and do not meet industry safety and fire standards. Further, you request support for the Dixon amendment that would place FPI on an equal basis with private industry.

The FPI is a required source of supplies as described in Part 8 of the Federal Acquisition Regulation. Agencies not satisfied with the unit price or any aspect of suitability may exercise the disputes option. Products furnished to the DoD must meet required specifications completely. If the products fail to meet military specifications, the item is withdrawn and acquired immediately under public exigency. The DoD does not have a history of failures regarding products furnished by the FPI. The safety and fire problems that you report are very serious, such that we will request FPI to address them fully.

Now, let us consider the Dixon amendment. The FPI has preference over small business, small disadvantaged business, and large business. This preference within DoD exceeds $100 million annually. The basis for the preference resides in a statute enacted some 55 years ago. The purpose of the statute is to assist in the rehabilitative process for prisoners entrusted to the FPI, an organizational element of the Federal Bureau of Prisons.

The DoD has worked with the Department of Justice in fulfilling the congressional preference program. Recently, we were requested by the Attorney General to support the Department of Justice in its efforts to have the Senate-approved amendment withdrawn during the conference period. After careful review of the Senate amendment, a decision was made by the Secretary of

Defense to support the Attorney General. This decision was relayed to the Attorney General on September 25, 1989.

Thank you for your interest in the Department of Defense.

Sincerely,

Horace J. Crouch

HORACE J. CROUCH
Director

COMPARISON A

	FED PRI IN		COMPANY "A"		COMPANY "B"		COMPANY "C"	
QUAN	UNIT COST	EXT	UNIT COST	EXT	UNIT COST	EXT	UNIT COST	EXT
1	$235.50	$235.50	$466.00	$466.00	$569.00	$569.00	$504.00	$504.00
2	$279.00	$558.00	$555.00	$1,110.00	$680.00	$1,360.00	$603.00	$1,206.00
1	$312.00	$312.00		$0.00	$723.00	$723.00	$654.00	$654.00
1		$0.00	$646.00	$646.00		$0.00		$0.00
1	$198.00	$198.00	$390.00	$390.00	$460.00	$460.00	$448.00	$448.00
1	$99.00	$99.00	$362.00	$362.00	$388.00	$383.00	$399.00	$399.00
1	$63.00	$63.00	$0.00	$0.00	$239.00	$239.00	$251.00	$251.00
1		$0.00	$289.00	$289.00	$0.00	$0.00	$0.00	$0.00
1	$196.50	$196.50	$337.00	$337.00	$319.00	$319.00	$347.00	$347.00
2	$117.00	$234.00	$327.00	$654.00	$347.00	$694.00	$341.00	$682.00
1	$76.50	$76.50	$0.00	$0.00	$119.00	$119.00	$133.00	$133.00
1	$0.00	$0.00	$130.00	$130.00	$0.00	$0.00	$0.00	$0.00
1	$270.00	$270.00	$670.00	$670.00	$661.00	$661.00	$504.00	$504.00
2	$48.00	$96.00	$130.00	$260.00	$143.00	$286.00	$144.00	$288.00
1	$24.00	$24.00	$79.00	$79.00	$117.00	$117.00	$90.00	$90.00
1	$31.50	$31.50	$22.00	$22.00	$91.00	$91.00	$135.00	$135.00
2	$0.00	$0.00	$28.00	$56.00	$56.00	$112.00	$83.00	$166.00
		$2,394.00		$5,471.00		$6,138.00		$5,307.00
		$0.00	0.7	$3,829.70		$4,296.60		$4,064.90
		----------		----------		----------		----------
		$2,394.00		$1,641.30		$1,841.40		$1,742.10
)NS	87	$208,278.00		$142,793.10		$160,201.80		$151,562.70

COMPARISON B

COST COMPARISON

WORSTATION ITEM	QUANTITY	FPI PRICE ea.	QTY. COST	"A" PRICE ea.	QTY.COST	SAVINGS
A	74	$ 2,459.89	182,031.86	$ 1,487.41	$ 110,068.34	
B	162	$ 3,486.37	564,791.94	$ 1,761.11	$ 285,299.82	
C	450	$ 3,474.04	1,563,318	$ 2,148.66	$ 966,897.00	
E 1	128	$ 4,408.31	564,263.68	$ 2,850.16	$ 364,820.48	
E 2	129	$ 4,565.46	588,944.34	$ 3,042.90	$ 392,534.10	
F	240	$ 4,491.43	1,077,943.20	$ 2,751.26	$ 660,302.40	
G	119	$ 6,121.41	728,447.79	$ 3,918.28	$ 466,275.32	
TOTALS	1,302		$ 5,269,740.81		$ 3,246,197.46	$ 2,023,543.35

Statement of Benjamin Maynard, representing Envelope Manufacturers

July 25, 1990

UNICOR'S PROPOSED ENTRY INTO ENVELOPE MANUFACTURING

UNICOR's pending proposal to build an envelope manufacturing facility and commence the production of envelopes for sale to the Federal Government is manifestly contrary to its statutory mandate. UNICOR describes envelope manufacturing as "a highly automated, capital-intensive operation."

Congress, however, requires in 18 U.S.C. § 4122(b)(2) that UNICOR "shall concentrate on providing to the Federal Government only those products which permit employment of the greatest number of those inmates who are eligible to work as is reasonably possible." UNICOR cannot discharge this statutory duty by entering capital intensive industries that will require millions of dollars of investment yet provide employment to only a relatively small number of Federal inmates.

New legislation must make absolutely clear that UNICOR shall enter, or expand market share in, an industry only if it is labor intensive. In addition, this new legislation must make it clear to UNICOR that, when choosing among several different labor intensive industries, it must first enter or expand market share in the industry in which a dollar of required capital investment will go farthest toward creating jobs for prisoners. When the nation is faced with a budget deficit, any action to the contrary by UNICOR would be profligate fiscal behavior. With your support, these amendments will ensure that UNICOR provides the greatest employment of Federal prisoners at the least expense to taxpayers, business, and free labor.

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J. GREGORY SIDAK
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August 17, 1990

BY MESSENGER

Mr. Richard P. Seiter
Chief Operating Officer
Federal Prison Industries, Inc.
320 First Street, N.W.
Washington, D.C. 50534

Re: Petition for Reconsideration of the Decision of the Board of Directors Authorizing UNICOR to Produce Envelopes for Sale to the Federal Government

Dear Mr. Seiter:

On August 10, 1989, Federal Prison Industries, Inc. ("UNICOR") published in the *Commerce Business Daily* the decision of its Board of Directors to permit UNICOR to build an envelope manufacturing facility and commence the production of envelopes for sale to the Federal Government (hereinafter "Board's Decision"). The Envelope Manufacturers Association of America ("EMAA") hereby petitions the Board to reconsider, and reverse, its decision. In the interests of brevity, EMAA will not repeat here all of the arguments made in its comments and reply comments in opposition to UNICOR's envelope proposal; rather, EMAA incorporates herein those arguments by reference.

EMAA focuses here on the significant errors of law and fact that the Board commits in its Decision.[1] These errors raise three specific legal questions: First, is UNICOR's entry into a capital intensive industry lawful? Second, assuming that UNICOR's entry into a capital intensive industry is unlawful, would UNICOR's officers and Board members violate the Antideficiency Act by spending funds to implement UNICOR's entry into envelope manufacturing? Third, assuming arguendo that 18 U.S.C. § 4122(b)(2) does not ban UNICOR's market entry into a capital intensive industry, is UNICOR's proposed market share reasonable?

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[1] EMAA would object to the application in this case of UNICOR's proposed five-page limit on a petition for reconsideration of a decision by its Board of Directors. That page limit cannot apply in this case because it was merely a proposed procedure at the time this proceeding began (and, so far as EMAA is aware, continues to be no more than a tentative procedure). More important, the Board's Decision in this case
(footnote cont'd)

The Appendix to this Petition is a report prepared by Dr. Frederick R. Warren-Boulton, which analyzes the economic reasoning contained in the Board's Decision and evaluates the degree to which UNICOR's entry into envelope manufacturing would create new jobs for Federal prisoners. Dr. Warren-Boulton is an economic consultant who until recently was Deputy Assistant Attorney General for Economic Analysis in the Antitrust Division of the United States Department of Justice. He concludes that envelope production appears to satisfy none of the criteria for an economically efficient product whose production by UNICOR will comply with Congressional directives. Envelope manufacturing is not relatively labor intensive by any of the statistical measures that Dr. Warren-Boulton employs. At the same time, however, there are 21 industries in which UNICOR currently operates that are more labor intensive than envelope manufacturing and in which UNICOR appears to account for less than five percent of sales to the Federal Government. These 21 industries, Dr.

(footnote cont'd)

runs 38 pages in length; five pages is inadequate to address the numerous errors of law and fact reflected in that Decision. To restrict EMAA's ability to respond in this manner would frustrate the statutory purposes underlying 18 U.S.C. § 4122(b)(4). If, however, UNICOR believes that the five-page limit does apply to this Petition, EMAA hereby requests a waiver of that page limit and believes that it has shown good cause why such a waiver is warranted in these circumstances.

In addition, EMAA objects to the Board's failure to make available, prior to the date of this Petition, copies of its decisions rendered on July 31, 1990 with respect to UNICOR's proposed entry into the manufacture of all-purpose shorts, trip flares, combat boots, and oxford/safety shoes. EMAA reserves the right to supplement this Petition when it has had a reasonable opportunity to examine the Board's decisions in these four other cases.

Warren-Boulton concludes, are superior to envelope manufacturing as candidates for creating new jobs for Federal prisoners. Therefore, he concludes that envelope manufacturing is highly unlikely to be the industry whose entry by UNICOR would create the greatest number of new jobs for Federal prisoners.

I. Because Envelope Manufacturing Is Capital Intensive, As UNICOR Has Long Conceded, UNICOR's Entry Into This Industry Would Violate 18 U.S.C. § 4122(b)(2).

Congress requires, in 18 U.S.C. § 4122(b)(2), that UNICOR "shall concentrate on providing to the Federal Government only those products which permit employment of the greatest number of those inmates who are eligible to work as is reasonably possible." Director Quinlan of the Federal Bureau of Prison told Congress only seven months ago that, to ensure "that as many inmates as possible can be put to work," UNICOR's "production must be labor intensive." *Hearings before the Subcommittee on Courts, Intellectual Property and the Administration of Justice of the House Judiciary Committee*, unpublished submission at 3 (Jan. 30, 1990). Similarly, the Board's Decision characterizes Section 4122(b)(2) as a "mandate to 'concentrate' on labor-intensive industries." (p. 23) But envelope manufacturing is not labor intensive: UNICOR's own staff admits, and UNICOR's Board does not dispute, that "the production of envelopes is a highly automated, capital-intensive operation." *An Analysis of the Impact on Private Industry Resulting from UNICOR's Entry into Envelope Manufacturing*, at 3 (prepared by James Emmett Hagerty, UNICOR Product Development Group, Oct. 31, 1989). UNICOR, therefore, has no legal authority to enter envelope manufacturing. By requiring that UNICOR maximize the employment of Federal inmates, Section 4122(b)(2) in effect prohibits UNICOR from entering a capital intensive industry. This is the logic behind Director Quinlan's remark to Congress and the Board's own interpretation of Section 4122(b)(2) as a "mandate to 'concentrate' on labor-intensive industries."

By authorizing UNICOR to manufacture envelopes, however, the Board has transgressed the boundaries that Congress drew for UNICOR's activities when it enacted Section 4122(b)(2) only two years ago. The legal analysis upon which the Board would justify UNICOR's unlawful action consists of little more than underscoring, at page 25 of its Decision, the word "reasonably" that appears in 18 U.S.C. § 4122(b)(2). The Board thereby implies that UNICOR may "reasonably" act with willful disregard for what the Board itself calls UNICOR's statutory "mandate to 'concentrate' on labor-intensive industries."[2/] The arguments that lead the Board to this erroneous and self-contradictory legal conclusion are either unsupported by any evidence or specious on their face:

1. The Board states that it "considered the relative labor intensity of a number of industries, by comparing output per production worker." (pp. 22-23) Yet it never identified these other industries, never identified their respective measures of output per production worker, and never established that these industries were ruled out because they are more capital intensive than envelope manufacturing.

2. The Board states that it "feels that UNICOR's mandate to 'concentrate' on labor-intensive industries does not mean that each and every endeavor that the Corporation is engaged in, must involve maximum labor intensity on the Census spectrum." (p. 23) The Board provides no legal or factual evidence to support its novel "feeling" about statutory interpretation. By ascribing this meaning to the verb "concentrate," the Board in effect would erase this word from the face of 18 U.S.C. § 4122(b)(2). Moreover, the Board never substantiates its subtle but erroneous implication that envelope manufacturing deviates only modestly from "maximum labor intensity on the Census spectrum." To the contrary, Dr. Warren-Boulton's analysis shows that envelope manufacturing is considerably less labor intensive than most of UNICOR's activities.

[2/] In a related vein, the Board states that "[a]lthough ideally, a direct link from UNICOR employment to a similar private sector job might be desirable in certain circumstances, the training provided by UNICOR employment has many other objectives, as well." (p. 31) The Board, however, never identifies the "certain circumstances" in which it "might" not be "desirable" for UNICOR's employment of prisoners to provide "a direct link . . . to a similar private sector job." Surely there can be none. Nor does the Board explain how it has determined the desirability or undesirability of UNICOR providing "a direct link . . . to a similar private sector job." Most important, Board does not -- and cannot -- reconcile the statement quoted above with UNICOR's statutory duty to enter new industries that "will give the inmates of all Federal penal and correctional institutions a maximum opportunity to acquire a knowledge and skill in trades and occupations which will provide them with a means of earning a livelihood upon release." 18 U.S.C. § 4123 (emphasis added).

3. The Board then states that "[t]he overwhelming number of industries that UNICOR is involved in are highly labor intensive." (p. 23) EMAA applauds this achievement. The Board, however, thereby implies that UNICOR's entry into envelope manufacturing, which UNICOR admits is capital intensive, should be overlooked. The Board's Decision offers no evidence for this remarkable inference of an exception to what the Board itself describes as Section 4122(b)(2)'s "mandate to 'concentrate' on labor-intensive industries."

4. In the private sector, competition forces producers to select the most efficient mix of capital, labor, land, and other factors of production. The Board states that "in all of its industrial activities the Corporation magnifies the industry's labor intensity by often employing 2-3 times as many inmate production workers as the private sector would in a similar endeavor . . . . Through UNICOR's focus on inmate employment, which utilizes manpower-intensive rather than machine-intensive procedures wherever possible, it can ensure that even those industries which might be considered to be less labor-intensive in a private setting, are conducted in labor-intensive fashion by UNICOR." (p. 23) The Board in effect suggests the overboard rule that, if labor can be substituted at all for capital in a particular industry, then UNICOR should be permitted to enter that industry. The Board, however, is mixing apples and oranges: In economic terms, it conflates labor intensity and factor substitution. In any industry, there will be some degree of substitutability between capital and labor. That is no excuse for the Board to deviate from its self-described statutory "mandate to 'concentrate' on labor-intensive industries."

5. The Board states that "UNICOR has had to make strenuous efforts to identify activities which . . . are at least moderately labor-intensive . . . ." (p. 24) The Board, however, never defines the vague concept of a "moderately labor-intensive" industry, nor does it explain how Section 4122(b)(2), which instructs UNICOR to make "only" products that would "permit employment of the greatest number" of prisoners, can be construed to allow UNICOR to enter any industry that it chooses to describe as "moderately" suited to maximizing employment of Federal prisoners.

6. The Board indicates that UNICOR seeks to enter industries that "offer the potential to provide a sufficient return on investment which is adequate to support more highly labor-intensive but less economically viable enterprises." (p. 24) The Board, however, does not explain the statutory authority for its assertion that UNICOR may enter capital intensive industries in order to cross subsidize production

that is labor intensive. Nor does the Board identify (1) the specific activities that UNICOR and its Board consider to be "less economically viable enterprises" or (2) the specific activities in which UNICOR currently engages that "offer the potential to provide a sufficient return on investment" to "support more highly labor-intensive but less economically viable enterprises." Finally, the Board does not explain why, particularly in light of its ability to exploit its superpreference, UNICOR's labor intensive industries should be "less economically viable" than capital intensive industries that UNICOR might wish to enter.

7. The Board tersely concludes that UNICOR's operations are "highly labor-intensive" "on balance" -- and not that its operations are uniformly "highly labor-intensive." (p. 24). Far from considering this discovery to be grounds for concern, the Board believes that it justifies further diluting the overall labor intensity of UNICOR's operations by entering envelope manufacturing. To add to the arbitrariness of this reasoning, the Board at no point specifically identified those UNICOR operations that it considers not to be "highly labor-intensive."

In short, the Board's Decision is founded upon reasoning that demonstrates, on its face, the absence of statutory authority under 18 U.S.C. § 4122(b)(2). The Board's nonchalance toward the issue of labor intensity, especially when juxtaposed against the rigor of Dr. Warren-Boulton's analysis in the Appendix to the Petition, reveals UNICOR's envelope manufacturing plan to be far less concerned about maximizing the employment of Federal prisoners than increasing the size of its business empire. The Board's attempt to authorize UNICOR to enter an industry that UNICOR long ago admitted to be capital intensive is an attempt to authorize unlawful action that is "short of statutory right." 5 U.S.C. § 706.

II. UNICOR Would Willfully Violate the Antideficiency Act, If It Has Not Done So Already, by Its Use of the Prison Industries Fund to Enter a Capital Intensive Industry.

The Board misconstrues UNICOR's authority to spend public funds and obligate the United States Treasury. When Congress enacted 18 U.S.C. § 4122(b)(2), it established as law what simple economics tells us: When the Federal Government seeks to create jobs for prisoners, the public's money will be most productive if UNICOR invests those funds in labor intensive industries rather than capital intensive industries. For

UNICOR to attempt to create prison jobs by entering capital intensive industries would be profligate fiscal behavior.

Because UNICOR's market entry into a capital intensive industry is itself unlawful, it follows that UNICOR's officers and directors would willfully violate the Antideficiency Act, 31 U.S.C. § 1341(a)(1), if they were to cause UNICOR to use the Prison Industries Fund to advance that unlawful market entry. Congress specified that UNICOR "is authorized to employ" the Prison Industries Fund in the United States Treasury only "in accordance with laws generally applicable to the expenditures of the several departments, agencies, and establishments of the Government." 18 U.S.C. § 4126(c). Perhaps the most fundamental appropriations law generally applicable to the government is the requirement that "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." 31 U.S.C. § 1301(a). In UNICOR's case, it cannot lawfully apply the Prison Industries Fund to an object -- namely, entry into an admittedly capital intensive industry -- that so obviously deviates from the Congressionally mandated goal of maximizing the employment of Federal prisoners.

The moment that UNICOR's officers and directors expend public funds or encumber the United States Treasury in furtherance of this unlawful purpose, they will have willfully violated the Antideficiency Act, 31 U.S.C. § 1341(a)(1), thereby subjecting themselves to punishments as severe as removal from office, a $5,000 fine, and imprisonment for two years. 31 U.S.C. §§ 1349, 1350. This statutory prohibition against unauthorized spending or borrowing implements the requirement in Article I, section 9 of the Constitution that, "No money shall be drawn from the Treasury but in Consequence of Appropriations made by Law." The Attorney General has opined: "The manifest purpose of the Antideficiency Act is to insure that Congress will determine for what purposes the Government's money is to be spent and how much for each purpose." *Applicability of the Antideficiency Act Upon a Lapse in an Agency's Appropriations*, 4A Op. Off. Legal Counsel 16, 19-20 (1980). By enacting 18 U.S.C. § 4122(b)(2) two years ago, Congress determined in effect that UNICOR shall not spend public funds -- as its envelope manufacturing proposal obviously would require it to do -- to transform itself, to the detriment of private industry and free labor, into a gulag conglomerate only peripherally concerned about maximizing the employment of Federal inmates.

III. UNICOR's Proposed Market Share Is Not "Reasonable" Under 18 U.S.C. § 4122(b)(2).

Section 4122(b)(2) requires that UNICOR must "avoid capturing more than a reasonable share of the market among Federal departments, agencies, and institutions for any specific product." The Board's Decision would violate this requirement in four respects.

A. The Board Incorrectly Defines the Relevant Market for Purposes of Section 4122(b)(2).

EMAA showed that $34 million of the $64 million market for government envelopes in 1988 would be in categories that UNICOR would be unable or unlikely to produce, given the skill limitations of its workers and the configurations of its proposed factory. Westvaco refined this analysis and showed that UNICOR's true share of the relevant product market would be 23 percent, which would make UNICOR at least the second largest government supplier of non-specialty envelopes. For UNICOR to take action that would confer on itself so high a market share would turn the "reasonable share of the market" requirement in Section 4122(b)(2) on its head.

B. Even If UNICOR's Market Definition Is Correct, Its Proposed 11.3 Percent Market Share Is Unreasonable in Light of the Size Distribution of Private Envelope Manufacturers.

The Board's Decision ignores EMAA's position that, as a matter of law, Section 4122(b)(2) must take into account the size distribution of firms in the affected industry. Even the proposed market share that UNICOR asserts to be correct -- 11.3 percent by 1994 -- would make it the third largest envelope supplier to the Federal Government, exceeded in size only by Westvaco and one other firm. As a matter of law, a market share that would permit UNICOR to dwarf all but two of the firms that produce envelopes for sale to the Federal Government cannot be "reasonable" under Section 4122(b)(2).

C. The Board's Projections of Market Growth Rest On Data that the Board Knows Are Statistically Unreliable.

The Board relies on an erroneous estimate of the growth in shipments of envelopes. This error directly distorts not only the Board's ultimate assessment of the competitive condition of the envelope industry, but also the reasonableness of the market share projections that correspond to UNICOR's proposal.

At pages 3 to 5 of its reply comments, dated April 20, 1990, EMAA exposed the unreliability of UNICOR's hypothetical data on future shipments in the envelope industry. In particular, EMAA showed that the Department of Commerce estimates that UNICOR uses are based on data that were compiled no more recently than January 1989, and that the econometric methodology used by Department of Commerce was unreliable because it was based on only eleven observations and thus has a wide margin of error.

In its Decision, the Board misses the whole point of EMAA's econometric argument, saying that the EMAA criticizes the "low level of reliability" of the Commerce Department sales estimates "because of the inherent limitation of econometric forecasting." (p. 3) This characterization distorts, not merely oversimplifies, EMAA's argument. EMAA did not assert that the Commerce Department estimates are unreliable because the science of econometric forecasting has "inherent limitation[s]." The reliability of accepted econometric procedures -- such as the bivariate least-square regression that the Commerce Department estimates -- depends on how many observations are used to perform that statistical estimation. The econometric procedure itself is not unreliable in any theoretical sense; rather, what is unreliable is the attempt to execute that procedure when the researcher has too few observations to produce statistically significant results. For UNICOR to base its proposal on the Commerce Department projections is to draw erroneous inferences that are not supported by the theory of probability that underlies econometric methods.

The Board, however, decides that the Commerce Department's unreliable estimates of envelope shipments still should be relied upon: "It is entirely reasonable for the corporation to rely on the government's principal forecasting arm to estimate what industry shipments will be over the next several years . . . ." (p. 5) EMAA asserts that the supposed pedigree of the organization performing the econometric estimation is no excuse for the Board to cover its eyes and knowingly use estimates of envelope shipments that have no statistical validity.

By professing such faith in the Commerce Department's unreliable data, the Board ignores that President Bush himself is officially skeptical about the quality of the Federal Government's economic statistics -- so much so that he has approved a multi-year initiative to improve them. 1990 *Economic Report of the President* 285. This Administration effort is chaired by the Chairman of the President's Council of Economic Advisers, who reported in February of this year that there is widespread and justifiable concern over "the accuracy of measurement of even the most basic variables, such as output and inflation," particularly because "[s]tatistics provided by the Federal Government . . . drive government policy," *id.* at 281, as certainly is the case with respect to the Board's Decision here. Consequently, the President has ordered an Administration working group to recommend "methodological . . . improvements" in the compilation of "'core' economic statistics," such as output. *Id.* at 285.

Because of its uncritical predisposition, the Board pronounces UNICOR's reliance on the Commerce Department's unreliable data "soundly based." (p. 6) This conclusion, upon which rests much of the Board's analysis of the reasonableness of UNICOR's proposed market share, is arbitrary and capricious and is unsupported by substantial evidence. 5 U.S.C. § 706. Consequently, this legal and factual deficiency provides a separate and sufficient ground on which to conclude that the Board's approval of UNICOR's proposal to enter envelope manufacturing is unlawful.

D. The Board Ignores That UNICOR's Extrapolation of Industry Demand for Envelopes, Based on Historical Data, Is Contradicted by the Observed Decline in Envelope Sales.

The Board erroneously relies on UNICOR's projections of rising demand for envelopes during 1988 and 1989. UNICOR's data for 1988 and 1989 -- and its projections for 1990 and beyond -- are nothing more than hypothetical extrapolations from outdated data. Whether extrapolated by UNICOR or the Commerce Department, these projections simply do not comport with what actually occurred. EMAA data show that envelope sales actually fell from 1988 to 1989 by 1.9 billion units, or by about 1.6 percent. It is arbitrary and capricious, and unsupportable by substantial evidence, for the Board to accept UNICOR's projection of continually rising envelope sales through the 1990s based on a methodology that cannot even account for the actual declines in sales during the past two years.

Conclusion

The Board's Decision is arbitrary and capricious and is unsupported by substantial evidence. More troubling, the Decision is openly contrary to law. It permits UNICOR to act in excess of statutory authority and short of statutory right. The Board's only lawful recourse in this case is to reverse its Decision and deny UNICOR permission to commence the manufacture of envelopes.

Respectfully submitted,

ENVELOPE MANUFACTURERS
ASSOCIATION OF AMERICA

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J. GREGORY SIDAK
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September 21, 1990

BY MESSENGER

Mr. Richard P. Seiter
Chief Operating Officer
Federal Prison Industries, Inc.
320 First Street, N.W.
Washington, D.C. 50534

Re: Supplement to Petition for Reconsideration of the Decision of the Board of Directors Authorizing UNICOR to Produce Envelopes for Sale to the Federal Government

Dear Mr. Seiter:

On August 10, 1990, Federal Prison Industries, Inc. ("UNICOR") published in the *Commerce Business Daily* the decision of its Board of Directors to permit UNICOR to build an envelope manufacturing facility and commence the production of envelopes for sale to the federal government (hereinafter "Board's Decision"). On August 17, 1990, the Envelope Manufacturers Association of America ("EMAA") filed a petition asking the Board to reconsider, and reverse, its decision ("the Petition").

EMAA hereby requests that UNICOR's Board place into the record of this proceeding a six-page memorandum dated March 28, 1990, from Robert D. Willig, Deputy Assistant Attorney General in the Antitrust Division, to Donald B. Ayer, Deputy Attorney General of the United States (hereinafter "the

Antitrust Division Memorandum").[1] This Memorandum was prepared by economists in the Antitrust Division on the subject of whether an expansion of UNICOR's current operations would have a detrimental competitive impact on private firms. Specifically, the Antitrust Division Memorandum addresses various proposals by Senator Helms to limit UNICOR's activities, as well as several proposals advanced by UNICOR itself.

The Antitrust Division Memorandum does not discuss envelope manufacturing. Therefore, it does not purport to determine what would be a reasonable market share for UNICOR to have in that industry, assuming arguendo that UNICOR had the legal authority to enter envelope manufacturing. Nonetheless, the Memorandum's conclusion comports with the analysis of Dr. Frederick R. Warren-Boulton (contained in Appendix I to EMAA's August 17, 1990 Petition) that UNICOR can, without harming competition, create a significant number of new jobs for Federal prisoners simply by expanding production in its existing industries. Dr. Warren-Boulton identified 21 industries in which UNICOR currently operates that are more labor intensive than envelope manufacturing and in which UNICOR appears to account for less than five percent of sales to the Federal Government. In these 21 industries, it would appear that UNICOR could expand production (presumably at a fraction of the cost of entering from scratch a new industry such as envelope manufacturing) and still avoid causing competitive harm to private firms.

The Antitrust Division Memorandum is directly relevant to EMAA's Petition. It concludes that UNICOR can expand production in any of its current industries (not merely the 21 identified by Dr. Warren-Boulton) without harming private competitors in those industries:

> At most, the expansion of Unicor may impose de minimis short-term adjustment costs on firms that compete with it for

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[1] Four days ago, the Department of Justice released this document to EMAA, pursuant to a Freedom of Information Act request that EMAA filed with UNICOR on August 13, 1990. The marks and marginalia appearing on several pages of the Antitrust Division Memorandum were present in the document provided to EMAA by the Department of Justice.

> sales to the Federal Government. The extent of these adjustment costs depends upon the fraction of total industry output accounted for by the expansion. In all of the industries where Unicor participates, this fraction is extremely small.

Antitrust Division Memorandum, at 3 (footnote omitted). The Antitrust Division emphasized that this conclusion applied even to furniture and textiles -- industries that have sought and continue to seek legislation specifically to protect them from further UNICOR activity:

> The domestic furniture and textile industries had sales in excess of $102 billion in 1987. Even if Unicor were to double the number of inmates employed, and to double the sales per inmates by increasing efficiency over the next ten years, and if the size of the market were not to grow at all from its 1987 level, Unicor's expansion impact on these industries would be less than one-half of one percent. Growth in these industries at the average level of all industries in the U.S. would swamp even this effect, and lead to increased private sector employment in furniture and textiles after Unicor expansion were accounted for.

Id. Thus, the Antitrust Division -- the entity within the Justice Department (if not the entire Executive Branch) having the greatest experience and expertise in analyzing issues of market competition -- has concluded in a memorandum to the Deputy Attorney General that, as a matter of economics, there is no basis for concluding that UNICOR's expansion of its current production would have anticompetitive effects on private firms.

As EMAA has argued throughout this proceeding, and as the House report that accompanied the Federal Prison Industries Reform Act of 1988 explicitly states, "18 U.S.C. Section 4122(b)(2) provides that Federal Prison Industries shall concentrate on manufacturing products that are labor intensive." H. Rep. No. 864, 100th Cong., 2d Sess. 5 (1988) (emphasis added). UNICOR's envelope manufacturing proposal violates this statutory mandate. The Antitrust Division Memorandum reinforces that legal conclusion; it forecloses any attempt by UNICOR to justify its decision to enter envelope manufacturing on the specious grounds that UNICOR has no reasonable alternative to entering capital intensive industries.

Given that the Antitrust Division Memorandum was written in March, it is remarkable that the Board's Decision on envelope manufacturing, which was made in late July and officially published on August 10, did not even refer to the Antitrust Division's expert analysis.

Respectfully submitted,

ENVELOPE MANUFACTURERS
ASSOCIATION OF AMERICA

By J Gregory Sidak
Dana T. Ackerly
J. Gregory Sidak
Covington & Burling
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Its Attorneys

U.S. Department of Justice

Washington, D.C. 20530

17 SEP 1990

J. Gregory Sidak, Esquire
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044

Dear Mr. Sidak:

This letter responds to your August 13, 1990 Freedom of Information Act ("FOIA") request, directed to Federal Prison Industries, Inc., for access to certain documents relating to UNICOR. Federal Prison Industries, Inc. referred your request to the Antitrust Division for response on September 7, 1990.

We are enclosing a six-page document responsive to your request.

Sincerely yours,

Elaine M. Fidler

Elaine M. Fidler
Assistant Chief, FOIA/PA
Antitrust Division

Enclosure

U.S. Department of Justice

Antitrust Division

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

March 28, 1990

MEMORANDUM

TO: Donald B. Ayer
Deputy Attorney General

FROM: Robert D. Willig
Deputy Assistant Attorney General
Antitrust Division

Jon M. Joyce, Chief
Economic Litigation Section
Antitrust Division

724-6665

Kevin James, Economist
Economic Litigation Section
Antitrust Division

RE: Unicor

Introduction

Unicor is a corporation wholly owned by the Federal Government whose primary purpose is to make prisons more manageable by reducing overcrowding and by attenuating inmate ennui.

Two features of Unicor have prompted charges that its activities are anticompetitive: its unique relationship with the Federal Government, and the low wages paid to inmate workers. At the same time, Unicor proposes dramatic expansion and revision of its operations in reaction to the expected doubling of the prison population. The purposes of this memorandum are to analyze the charge that Unicor is anticompetitive, and to comment on the proposals advanced by Senator Helms and by Unicor.

Unicor employs prison inmates to manufacture products in a wide variety of industries in five product divisions: textiles and leather, plastics and optics, woods, metals, and data/graphics. Currently, the corporation pays inmates about

$1 an hour, well below the wages paid in the private sector. 1/ Unicor employed 13,000 inmates and 1,400 civilians in 1989, and had sales of $361 million. The Bureau of Prisons expects the prison population to double over the next decade (from about 60,000 inmates now to 120,000 inmates in 1999). Unicor plans to expand inmate employment to 22,500 by 1999.

Unicor is legally required to sell exclusively to the Federal Government. Federal Agencies are required to procure items from Unicor if Unicor's product is of sufficient quality, can be delivered by the date the Agency requires, and is not more expensive than a comparable offering of the private sector. Agencies which do not believe that Unicor can meet the quality/delivery/cost criteria must obtain a waiver from Unicor to purchase the item from the private sector. As Unicor is capable of providing only a small percentage of total Government purchases of the goods it produces (e.g., Unicor's share of Federal office furniture purchases in 1988 was 12 percent), these waiver requests are routinely granted. 2/

Unicor's present structure and planned expansion raise two sets of issues. First, some private sector firms which compete with Unicor complain that because of low wages paid prison labor and because the Federal Government is required to purchase from Unicor, it maintains an unfair competitive advantage. In response, Senator Helms has introduced legislation which would limit Unicor's size, do away with the Federal preference, place a representative of the furniture industry on Unicor's Board of Directors, and apply GSA quality standards to Unicor products. 3/

Second, Unicor's current institutional form is inherently inefficient. This inefficiency both raises the current costs of running Unicor and increases the difficulty of implementing the planned expansion. Unicor hopes to reduce these inefficiencies through its proposals for the constraints now imposed on it (e.g., Unicor proposes to be exempted from Federal procurement regulations).

1/ Wage comparison with the private sector is spurious since prison labor is on average of low quality, and requires close supervision and monitoring for security reasons. See below for an approproximate reconciliation.

2/ According to Jim Hagerty, Unicor's Marketing Director, only three waiver requests were denied in 1989.

3/ This legislation was proposed on January 25, 1989, in S. 254.

Senator Helms' Proposals

The low wages paid to inmate workers are consistent with their level of productivity in the prison setting. The value-added per production worker in Unicor is about one-quarter that of a production worker in private sector firms in the same industries. Further, inmates lose about 25 percent of their work time to security precautions. Moreover, Unicor must employ more foremen per worker for monitoring and coordinating.

Thus, there is no validity to the assertion that Unicor competes unfairly as a consequence of the $1/hour wage paid to inmate workers. Requiring Unicor to pay wages to prisoners comparable to those in the private sector would elevate Unicor costs well above those experienced by private sector counterparts.

At most, the expansion of Unicor may impose de minimus short-term adjustment costs on firms that compete with it for sales to the Federal Government. The extent of these adjustment costs depends upon the fraction of total industry output accounted for by the expansion. In all of the industries where Unicor participates, this fraction is extremely small. 4/ For example, most of Unicor's sales are in furniture and textiles. The domestic furniture and textile industries had sales in excess of $102 billion in 1987. Even if Unicor were to double the number of inmates employed, and to double the sales per inmate by increasing efficiency over the next ten years, and if the size of the market were not to grow at all from its 1987 level, Unicor's expansion impact on these industries would be less than one-half of one percent. Growth in these industries at the average level of all industries in the U.S. would swamp even this effect, and lead to increased private sector employment in furniture and textiles after Unicor expansion were accounted for.

Although Senator Helms' proposals would have de minimus impact on the private sector, they would have severe consequences for Unicor's ability to fulfill its role in the prisons. Unicor must expand to deal with the projected increase in prison population. Unicor is prohibited from selling stock or issuing bonds since its ability to raise

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4/ Unicor emphasizes production of goods characterized by labor intensive production processes in order to maximize the number of prisoners that can be employed. These goods are typically produced in industries with numerous small firms.

capital is limited. If Unicor's ability to borrow from the Treasury were curtailed, it would be unable to buy enough capital goods for expansion. Prison overcrowding and inmate boredom would then be exacerbated.

Eliminating the Federal preference for Unicor could have adverse consequences. Since Unicor's primary function is to keep prisoners busy, Unicor values a steady and assured demand more than does the private sector. The Federal preference promotes this steady flow of sales. Moreover, in view of the ease with which waivers from the preference can be obtained, it is unclear why elimination of the preference would be of much private benefit. On the other hand, steady sales could be achieved via other means, and eliminating the Federal preference is not an unreasonable measure.

It seems unlikely that adding a representative of the furniture industry to Unicor's Board of Directors would improve Unicor's performance. Any such representative would have a clear conflict of interest.

There is sound rationale for the proposal that Unicor abide by GSA standards, and that the evaluations be done at points of production rather than at the far more numerous points of delivery.

Unicor's Proposals

Unicor proposes to reduce inefficiency by bringing the corporation's activities more closely in harmony with private sector markets. It cannot be completely market oriented without compromising its fundamental purposes, of course, but by permitting its activities to be guided by market forces where possible, it can achieve its desired goals more efficiently than is currently possible.

Inherent in Unicor's present institutional form are three sources of inefficiency: procurement, hiring, and resource use. Unicor's need to follow the complex Federal procurement regulations raises its cost of doing business relative to a private firm's. Federal hiring policies limit Unicor's ability to pay enough to attract much needed skilled workers and managers (e.g., electrical engineers). Finally, Unicor's limited exposure to market forces denies it strong incentives to use resources optimally.

The magnitude of Unicor's inefficiency is significant. If Unicor could become one-half rather than only one-quarter as efficient as a private firm, Unicor's revenue per inmate would increase by more than $10,000 a year, leaving Unicor with more than $100 million a year to use for such purposes as offsetting the costs of prisons or supporting inmates' dependents. 5/

Unicor proposes to increase its efficiency by obtaining a complete exemption from Federal procurement regulation, a limited exemption from Federal hiring regulations, and by engaging in a limited number of joint ventures with private sector firms.

Federal procurement regulations substitute for market mechanisms in monitoring purchasing decisions and behavior. While burdensome, these regulations serve a useful purpose and thus, Unicor needs to consider an effective monitoring mechanism as an alternative to these regulations. Removing monitoring via procurement regulation without substituting an alternate mechanism in its place (for, at best, Unicor will remain subject to only attenuated market monitoring) would create a situation ripe for abuse. 6/

Unicor's proposal for a limited exemption from Federal hiring policies has considerable merit. Unicor suffers from a lack of skilled labor and management (i.e., a private firm constrained to operate with Unicor's labor force and capital equipment would hire more skilled labor), and so obtaining these resources at market prices would certainly be of benefit.

Allowing Unicor to sell to the private sector would simply change who buys from whom, as Unicor would sell less to the Government and more to private sector customers, and firms in the private sector would sell more to the Government and less to private sector customers. Unicor believes that dispersing its sales would reduce the political pressure to which it is subject. Potentially, the steady demand that the Federal Government sales provide could be realized in the private sector by contracts containing this feature.

The most promising of the proposed reforms would allow Unicor to establish five pilot joint ventures with private firms, in which Unicor provides prison labor and private firms provide skilled labor and capital. A Unicor/private sector partnership could overcome many of Unicor's inherent inefficiencies. Procurement inefficiency would be eliminated

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5/ This calculation is based on the comparison of levels of value-added-per-worker mentioned above.

6/ Perhaps Unicor could establish a yardstick system based on comparing the performance of different prison factories.

by removing Unicor from procurement. Skilled labor and capital constraints would be eliminated, and market forces would impel efficient production techniques. 7/

One problem that may be encountered is contracting difficulties in providing inmate training of a general nature. While such training may be desirable, absent carefully crafted contracts the joint venture would have little incentive to provide it.

At this pilot stage, the extent to which Unicor plans to engage in joint ventures is insufficient to take full (or even significant) advantage of their potential to make Unicor more efficient now and ease the difficulty of Unicor's expansion over the next decade. It is important that such joint ventures be permitted to pay wages consistent with the low productivity of workers in the prison settings rather than be discouraged by a rule that standard market wages be paid. It would be productive for Unicor to pursue aggressive research to ascertain the maximum extent to which joint ventures would allow it to take advantage of market forces and the resources and abilities of private firms to improve prison industries.

7/ A Unicor study of the history of prison labor found that during the 19th century, when some prisons subcontracted with private firms along the lines suggested here, and others had prison industries run by Government Agencies along the lines of Unicor, the factories run by the private sector were more than twice as profitable.

U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, D.C. 20534

July 31, 1990

The Honorable Ike Skelton
Subcommittee on Procurement, Tourism, and Rural Development
United States House of Representatives
Washington, D.C. 20515-6320

Dear Mr. Chairman:

Thank you for your letter of July 30, 1990 inviting me or my representative to testify August 1, 1990 before your Subcommittee regarding Federal Prison Industries (FPI). I regret I will not be able to appear on this date as I have a previously scheduled out of town commitment.

However, Rick Seiter, Assistant Director for UNICOR and I would very much appreciate the opportunity to appear before your subcommittee at some later date so that we may share with the Members the very critical role that FPI plays within the Department of Justice and the Bureau of Prisons. Scheduling our appearance upon completion of your hearing would give the Subcommittee an opportunity to question us about issues raised by previous witnesses. In addition, I would be more than happy to address the issue you raise regarding FPI's quality assurance testing and procedures. I am pleased to say that FPI is firmly committed to high quality standards in all of its operations.

Because it is the policy of our Administration that 10 days be given to review and authorize testimony, I would appreciate timely notice of a future hearing. Again, thank you for your invitation and please be assured that the Bureau of Prisons and FPI are extremely sensitive to small business and the services they provide in the Federal market place.

Sincerely,

J. Michael Quinlan
Director

APPENDIX

AN ECONOMIC ANALYSIS OF UNICOR'S PLAN TO ENTER ENVELOPE MANUFACTURING: WHAT KINDS OF PRODUCTS SHOULD PRISONERS MAKE?

Frederick R. Warren-Boulton
Senior Vice President
ICF Consulting Associates

August 16, 1990

EXECUTIVE SUMMARY

This report presents an economist's view of how to interpret, measure, and implement the statutory criteria that Congress has imposed on UNICOR's selection of industries and on its operation in those industries. It concludes that:

(1) The dominant Congressional directive is to maximize employment for Federal prisoners, a directive which we interpret as instructing UNICOR to select products according to the relative intensity with which they would utilize inmate labor, and which implies a number of measurement criteria.

(2) Envelope production does not appear to satisfy this Congressional directive. Envelope manufacturing is not relatively labor intensive in terms of either employment per dollar of value added or employment per dollar of shipments. Using these measures, envelope production is also substantially less labor intensive than most of the industries in which UNICOR has initiated production. In addition, envelopes tend to be produced in higher-wage areas of the United States, indicating that the skill intensity of envelope production may be significant. And, most startlingly, envelopes are actually exported from the United States to less-developed countries (such as Mexico) that have an abundance of unskilled labor -- exactly the opposite of what one would expect if in fact the production process of envelopes relied intensively on unskilled labor.

(3) There are 21 industries in which UNICOR currently operates that are more labor intensive than envelope manufacturing and in which UNICOR may account for less than five percent of sales to the Federal government. These 21 industries are superior to envelope manufacturing as candidates for creating new jobs for Federal prisoners.

I conclude that many other industries are significantly more labor intensive than the envelope industry and that envelope manufacturing is highly unlikely to be an industry whose selection by UNICOR would comply with what I understand to be Congress' directive that UNICOR produce "only those products which permit employment of the greatest number of inmates."

AN ECONOMIC ANALYSIS OF UNICOR'S PLAN TO ENTER ENVELOPE MANUFACTURING: WHAT KINDS OF PRODUCTS SHOULD PRISONERS MAKE?

Frederick R. Warren-Boulton
Senior Vice President
ICF Consulting Associates

August 16, 1990

The Envelope Manufacturers Association of America (EMAA) has asked me to analyze the economic implications of the decision on July 31, 1990 by the Board of Directors of Federal Prison Industries (UNICOR) to authorize UNICOR to commence manufacturing envelopes for sale to the Federal government. In particular, EMAA seeks to know how the labor intensity of its industry will affect the ability of UNICOR to create jobs for Federal prisoners.

In Part I of this report, I examine the statutory criteria that Congress has imposed on UNICOR's selection of industries and on its operation in those industries. I explain how, in the absence of these selection and operational criteria, UNICOR would face very distorted incentives in terms of its choice of products to manufacture and the relative combination of capital, labor, and land that it should employ in such production. In Part II, I explain how one of the most important of these statutory criteria -- labor intensity -- can be measured, and I show how the labor intensity of envelope manufacturing compares to industries as a whole and to industries in which UNICOR currently operates. I find that, by several different tests of labor intensity, envelope manufacturing is confirmed to be intensive in factors other than labor (such as land, physical capital, or human capital). In Part III, I identify 21 industries in which UNICOR currently operates that provide greater opportunity for job creation for Federal prisoners than would UNICOR's entry into envelope manufacturing. In Part IV, I summarize the policy implications of my analysis.

My qualifications to undertake this report are as follows. I am Adjunct Scholar at the American Enterprise Institute and Senior Vice President of ICF Consulting Associates. I am the former Deputy Assistant Attorney General for Economic Analysis in the Antitrust Division of the United States Department of Justice. In this capacity as the Justice Department's chief economist, I regularly examined questions of market entry, market definition, factor intensity, and international competitiveness, as well as acting as an advisor to the United States Sentencing Commission on the design of the Sentencing Guidelines. I received my doctorate in economics from Princeton University in 1975. I have published extensively in academic journals on topics in industrial organization and regulation. Before entering the Justice Department, I was Associate Professor of Economics at Washington University in St. Louis, where I taught graduate courses in industrial organization, economic development and planning, microeconomic theory, international trade, and international finance. (A copy of my curriculum vitae is attached to this report.)

I. STATUTORY CRITERIA FOR THE SELECTION OF PRODUCTS BY UNICOR.

Chapter 307 of Title 18 of the United States Code establishes certain criteria for how UNICOR should determine which products to produce and how it should conduct its operations once it has begun to produce those products. I shall call the first set of criteria "selection criteria" and the second set of criteria "operational criteria." In what follows, I present an economist's view of how to interpret, measure, and implement these potentially conflicting criteria.

A. Selection and Operational Criteria.

I begin by listing the selection criteria in the order presented in Chapter 307 of Title 18 (that ordering may also indicate the priority order intended by Congress). I then list the operational criteria contained in UNICOR's enabling statutes.

With respect to selection criteria, UNICOR (or its Board of Directors) shall:

(1) Provide employment for the greatest number of . . . inmates . . . as is reasonably possible: UNICOR shall concentrate on providing to the Federal government only those products which permit employment of the greatest number of inmates.

(2) Diversify, so far as practicable, prison operations and so operate:

- (a) that no single private industry shall bear an undue burden of competition.
- (b) to reduce to a minimum competition with private industry or free labor.

With respect to operational criteria -- that is, criteria that apply once UNICOR has selected its products -- UNICOR shall, in addition to complying with criterion (2) above, which applies to operations as well as product selection, comply with the following criteria:

(3) Conduct its operations so as to produce products on an

economic basis.

(4) Avoid capturing more than a reasonable share of the market consisting of sales to the Federal government.

(5) Diversify its products (it would appear that Congress intended this word to be "production") so that UNICOR's sales are distributed among its industries as broadly as possible.

I would thus conclude that, in determining which products are to be produced, UNICOR has as its dominant criterion the creation of jobs for Federal prisoners. The second criterion is to avoid products whose production by UNICOR would significantly adversely affect private firms or their workers. Once products satisfying these two criteria are selected, they are to be produced by UNICOR as efficiently as possible ("on an economic basis"), but not in such amounts as to capture such a large share of any (total or Federal) market as to harm private firms or their workers.

These selection and operational criteria make good economic sense. Any absolute economic advantage, and certainly the comparative advantage, of prisons lies in a labor force that, while difficult to manage and probably relatively unskilled in the production of products that UNICOR is likely to select, has a remarkably low opportunity cost. In other words, prisons have a large pool of very cheap, unskilled labor that cannot be sold directly, and thus must be embodied -- preferably as inexpensively as possible -- in some product that can be shipped from the prison.

But why not instruct UNICOR simply to maximize profits, i.e., to produce in the most profitable way? If the advantage of prisons is in cheap, unskilled labor, then the most profitable products will be those that embody large amounts of unskilled labor relative to other inputs, such as capital, land, or skilled or managerial labor. Why, then, does Congress require this complex set of criteria?

A reasonable answer is that, as a government-owned business, UNICOR does not face a socially-optimal set of incentives. In particular, several of the prices that UNICOR pays or receives are likely to be so distorted from their competitive or socially optimal levels that if Congress told UNICOR simply to go out and "maximize profits" or "maximize the return on capital," the results would be highly undesirable. This problem of distorted price signals is not unique to U.S. prisons. It is a major problem in less developed and centrally planned economies, and it is, therefore, not surprising that Congress' instructions to UNICOR resemble the advice that economists give to those countries on how to select products for export, i.e., that these countries should concentrate on developing export industries that are relatively intensive in their employment of unskilled labor (whose private cost tends to be higher than its social cost) and which economize on the use of scarce foreign exchange, capital or skilled labor.

B. Price Distortions.

The main prices that appear to be distorted fall into three categories. First, the prices received by UNICOR for products sold to the Federal government are too high. Second, the prices paid by UNICOR for capital and land are too low. Third, and perhaps surprisingly, the prices paid by UNICOR for unskilled labor are too high.

1. Prices Received for Products Sold to the Federal Government.

UNICOR has a guaranteed Federal market by virtue of its "superpreference" contained in 18 U.S.C. § 4124. In principle, UNICOR's advantage over private suppliers is limited by the requirement that the Federal government "shall purchase [UNICOR products at prices] not to exceed current market prices." But in practice this rule is difficult to measure and enforce unless either the product is homogeneous or any difference in quality between UNICOR's product and the private product can be easily determined. Moreover, quality has many dimensions even beyond the physical characteristics of the product. Delivery times and reliability, for example, affect how large an inventory the customer needs to hold. Without a direct market test, therefore, it may be impossible to develop a reliable measure of overall relative quality, especially since individual customers may value particular quality characteristics differently. Even if the quality of a particular UNICOR product can be accurately measured and indexed, and even if the product is completely homogeneous, UNICOR still retains a competitive advantage by virtue of its having a seller's right of first refusal. At the very least, therefore, it is important that UNICOR not account for so large a share of Federal purchases of any given product as to make direct comparison impossible *ex post*.

Granting the superpreference to UNICOR in the Federal market is equivalent to a hidden subsidy. The superpreference can have at least three deleterious effects. First, because of the hidden subsidy, UNICOR may decide to produce a product that could more efficiently be produced in the private sector. Efficient private production is thus displaced by inefficient UNICOR production. Second, this subsidy is financed, in effect, by a tax on Federal agencies that must purchase UNICOR product, thus reducing the resources available in those agencies for more valuable uses. Third, by eliminating effective competition, any subsidy -- especially a hidden subsidy -- makes it less essential to minimize costs and to operate more efficiently. This distortion is particularly likely for government production. This combination of subsidies and government production does not bode well for UNICOR's efficiency.

Given the difficulties of establishing that UNICOR products are of equivalent price and quality to products in the private market, it makes sense for Congress to: (1) particularly stress the employment goal for products sold to the Federal government ("employment of the greatest number of . . . inmates"); and (2) limit UNICOR's share of the Federal market for each product ("avoid capturing more that a reasonable share of the market").

2. Prices Paid by UNICOR for Capital and Land.

UNICOR's cost of capital appears to be heavily subsidized. UNICOR can borrow from the Treasury at "a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity." 18 U.S.C. § 4129(a)(1). If the actual interest rate on this UNICOR debt is equal to the Treasury's minimum rate, then UNICOR's cost of capital is below that of any private firm -- because the interest rate contains no premium either for default risk or for non-diversifiable risk.

If Congress placed no limit on UNICOR's ability to borrow from the Treasury, thus allowing UNICOR to borrow any amount at the risk-free rate, then the single most profitable product for UNICOR to sell would be capital. In other words, to maximize profits, UNICOR would make very risky loans, much as savings and loans did during the 1980s. Fortunately, UNICOR's outstanding obligations to the Treasury are limited to 25% of net worth, a restriction that makes eminent sense as a way to control the damage caused when the government subsidizes access to capital. 18 U.S.C. § 4129(a)(1).

It also appears that land is provided below cost to UNICOR. UNICOR is authorized to locate its facilities "either within the precincts of any penal or correctional institution or in any convenient locality where an existing property may be obtained by lease, purchase, or otherwise." 18 U.S.C. § 4123. But it is not clear from this statutory language that UNICOR is obligated, when using land already owned by the Federal government, to make any transfer payment within the Federal government to reflect the opportunity cost of the land on which it erects its manufacturing facilities. In its annual report, UNICOR states: "The bureau of prisons provides land to UNICOR for the construction of its manufacturing facilities at no cost." In the cost projections for UNICOR's business plan for its envelope manufacturing proposal, therefore, there is no evident provision for a ground lease of any sort.

3. Prices Paid by UNICOR for Unskilled Labor.

It may seem counterintuitive that the prices that UNICOR pays for unskilled labor are too high, since UNICOR's wages are very low relative to wages in the private sector. But the relevant question is not how UNICOR's wages compare to those in the private sector, but how they compare to the social cost of using prison labor. The problem is that, in addition to directly affecting UNICOR's profits, prison employment generates benefits for society -- which economists generically call "positive externalities." The potential positive externalities include (1) reduced restlessness among prisoners and hence a lower cost for guards and other security measures (the "idle hands make mischief" effect); (2) increased punishment (a sentence to "hard labor");[1] and (3) skills acquired by prisoners that will increase their earnings once released and reduce the probability that they will return to a life of crime.[2] The result is that the "social cost" of prison labor, when these social benefits are implicitly deducted from the wage rate, is less than the cost that UNICOR actually pays for prison labor.

When the prices paid or received by a profit-maximizing firm are not equal to their social marginal costs, the signals that the market provides to the firm are distorted, and the firm will make the "wrong" decisions on what to produce and how to produce. In this instance, a profit-maximizing UNICOR could select products that are too capital and/or land intensive, and that use too little unskilled labor. In addition, given alternative technologies for producing such a product, the profit-maximizing UNICOR will tend to choose a technology that is more capital intensive and land intensive, and less labor intensive, than the socially optimal technology. Although alternative remedies are possible (the government could raise the price it charges UNICOR for land and capital, and use the revenues to subsidize UNICOR's labor and training costs), the most practical way to counteract the effect of these price distortions is the one that Congress chose: Impose on UNICOR criteria (maximize employment, diversify, limit the share of any market, and so forth) and constraints (such as limits on borrowing) that will mitigate the effect of these pricing distortions and push UNICOR toward producing the "right" products in the "right" way.

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[1] Using prisoners to break up boulders into gravel using only sledgehammers is a good example of a combination of the first and second externalities. The rockpile is the quintessential labor intensive activity. The social value of this activity presumably is not in the increased value of the rock, but rather its deterrent effect on crime and the effect on costs of incarceration.

[2] This externality, which is embodied in the requirement in 18 U.S.C. § 4123 that UNICOR shall "give . . . inmates . . . a maximum opportunity to acquire a knowledge and skill in trades and occupations which will provide them with a means of earning a living upon release," disappears if the prisoner is not expected to be released for a long period. A profit-maximizing UNICOR will prefer to train prisoners with long sentences, so that UNICOR can more than recover the costs of training, and it will prefer to reject for training prisoners with short remaining terms, even if those prisoners are better suited for training or if those prisoners (and society) would gain significantly once the prisoners are released. In the case of UNICOR's proposal to enter envelope manufacturing, for example, UNICOR stated that turnover among inmate production workers due to release and parole would not be a problem in terms of acquiring the specific skills to operate the complicated machinery in an envelope plant, because UNICOR intends to employ primarily serious offenders sentenced to long prison terms.

One unfortunate side effect of direct controls (as opposed to adjusting the prices faced by UNICOR), however, is that the target will attempt to evade those controls. Although Congress could impose some or all of the task of enforcement on the government, the parties having the best information and the strongest incentives to monitor UNICOR's choice of products are likely to be the private firms already producing that product.

The foregoing discussion implies that, if UNICOR is given complete discretion to select the products it will produce, it will chose products:

(1) that use too much capital and/or land, and too little unskilled labor;

(2) that may require skilled prison labor, but only if the prisoners to be trained have long remaining terms; and

(3) whose quality can vary in ways that are difficult to evaluate without information on the price that non-

captive buyers would be willing to pay in an open market.

II. MEASURING THE STATUTORY CRITERION OF LABOR INTENSITY.

In this Part, I measure the labor intensity of the American envelope industry by several alternative methods. I conclude that envelope manufacturing relies relatively less on the use of unskilled labor for its production.

A. Direct Measurement of Labor Intensity.

The most immediate indicator for the suitability of a product for UNICOR is its labor intensity. Standard measures of labor intensity include the number of employees per dollar of shipments and the number of employees per dollar of value added.

Employment per dollar of value added will generally be the most appropriate measure of labor intensity.[3] A high ratio of employment to value added, however, is a necessary but not sufficient condition for selection by UNICOR. For example, if some of the purchased inputs are expensive to transport and are located at some distance from the prison site, the product will be uneconomic for UNICOR to produce even if the ratio of employment to value added is high at the private plants located near the source of those inputs. The scope for such problems is greater, the lower the ratio of value-added to value of shipments. Thus the ratio of employment to value of shipments provides a second index that may be valuable as a screen: a low ranking in terms of employment to value of shipments may signal that the product is unsuitable for UNICOR.

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[3] Value added can be measured in either of two ways that are accounting identities: (1) as the difference between the value of the final product and the value of the purchased inputs, and (2) as the sum of the return to the original factors (that is, land, labor and capital).

Based upon four-digit SIC industry data published in the Census of Manufacturers, there are 116 four-digit industries that are more labor intensive in production than envelope manufacturing when labor intensity is measured in terms of value added. (See Table I.) In terms of the value of shipments measure, there are 144 industries more labor intensive than envelopes. Thus, for every dollar of value added (or, for every dollar of value of shipments), more inmate employment could be generated by UNICOR initiating production in these roughly 100 to 150 more labor-intensive industries. Indeed, the most labor intensive industry (in terms of value added) is two-and-a-half times more labor intensive than envelopes (in terms of the value of shipments, the corresponding figure is about three times.)

Furthermore, using these measures of labor intensity, envelope production is substantially less labor intensive than the industries in which UNICOR currently provides inmate employment. For example, every million dollars of value added in envelopes creates employment for 17 workers; every million dollars of shipments value generates employment for 8 workers. (See Tables II and III.) For all manufacturing industries entered by UNICOR (and for which I could find data), the average number of employees per million dollars of value added is 21, which is 24 percent higher than that for envelopes. The average number of employees per million dollars of shipments value is 11, which is 38 percent higher than the labor intensity of envelopes. Measured in terms of value added, there are 20 industries among those entered by UNICOR that are more labor intensive than envelopes; in terms of shipments value, the corresponding number of UNICOR industries is 29. By this standard,

TABLE I

Ranking of Envelope Industry's Labor Intensity Relative to U.S. Industries

Ratio	Rank	Range	Envelopes
Production Worker/Million Dollars of Value Added	117/434	1.461-43.788	17.436
Production Worker/Million Dollars of Shipments Value	145/433	0.423-23.783	8.006

Source: 1987 Census of Manufactures

TABLE II

Ranking of UNICOR Industries' Labor Intensity

Rank	SIC Code	UNICOR's Industry Description	Prod. Worker Per Million Dollars of Value Added
1	2381	Gloves	43.79
2	2329	Clothing, Mens/Boys	34.34
3	2326	Work Clothing	31.59
4	2393	Textile Bags	30.43
5	2321	Garments, Mens/Boys	30.08
6	2391	Draperies	29.72
7	2322	Underwear, Mens/Boys	28.13
8	2511	Wood Household Furn.	27.85
9	2499	Wood Products	26.88
10	2325	Trousers/Slacks	25.10
11	2211	Fabric Mills, Cott.	24.86
12	2392	Bed Linens & Bedspread	24.33
13	2231	Cotton and Wool Textile	24.30
14	2514	Metal Household Furn.	23.20
15	2394	Canvas Goods	22.91
16	2399	Textiles, Fabricated	22.79
17	2521	Wood Office Furn.	19.18
18	2599	Furniture/Fixtures	18.44
19	3999	Manufacturing, Misc.	18.34
20	3993	Signs/Advertising	17.70
21	**2677**	**Envelopes**	**17.44**
22	3645	Lighting Fixtures	17.40
23	3089	Plastic Products	16.91
24	3991	Brushes and Brooms	16.88
25	2759	Commercial Printing	16.74
26	2542	Office/Store Fixt's	16.37
27	2752	Commercial Printing	16.09
28	3499	Metal, Fabricated	15.59
29	3873	Watches/Clocks	15.40
30	2515	Mattresses, Found	15.37
31	3694	Electrical Equip.	15.09
32	3429	Misc. Hardware	14.36
33	3851	Opthalmic Goods	13.70
34	3648	Lighting Equipment	11.19
35	2522	Office Furn., except wood	10.29
36	3663	Radio/Broadcasting	8.43
37	3812	Electrical Equip.	6.42
		AVERAGE (excluding envelopes)	20.84

Source: 1987 Census of Manufactures. Four-digit SIC industries in which UNICOR produces were provided in a letter from James Hagerty, UNICOR, to Vickie Reh, EMAA, dated 8/7/90.

TABLE III

Ranking of UNICOR Industries' Labor Intensity

Rank	SIC Code	UNICOR's Industry Description	Prod. Worker Per Million Dollar Shipments Value
1	2381	Gloves	23.78
2	2329	Clothing, Mens/Boys	19.79
3	2326	Work Clothing	17.91
4	2321	Garments, Mens/Boys	16.07
5	2322	Underwear, Mens/Boys	15.38
6	2511	Wood Household Furn.	14.89
7	2499	Wood Products	14.08
8	2391	Draperies	13.90
9	2325	Trousers/Slacks	13.73
10	2393	Textile Bags	12.77
11	2394	Canvas Goods	11.83
12	2211	Fabric Mills, Cott.	11.78
13	2521	Wood Office Furn.	11.61
14	2231	Cotton and Wool Textile	11.52
15	2514	Metal Household Furn.	11.35
16	2599	Furniture/Fixtures	11.02
17	3999	Manufacturing, Misc.	10.61
18	3993	Signs/Advertising	10.32
19	2399	Textiles, Fabricated	10.24
20	2759	Commercial Printing	9.88
21	3645	Lighting Fixtures	9.87
22	2392	Bed Linens & Bedspread	9.45
23	3991	Brushes and Brooms	9.39
24	3851	Opthalmic Goods	9.35
25	2542	Office/Store Fixt's	9.04
26	3089	Plastic Products	8.97
27	2752	Commercial Printing	8.94
28	3499	Metal, Fabricated	8.57
29	3429	Misc. Hardware	8.09
30	**2677**	**Envelopes**	**8.01**
31	2515	Mattresses, Found	7.40
32	3873	Watches/Clocks	7.37
33	3694	Electrical Equip.	6.93
34	2522	Office Furn., except wood	6.56
35	3648	Lighting Equipment	5.91
36	3663	Radio/Broadcasting	5.07
37	3812	Electrical Equip.	4.38
		AVERAGE (excluding envelopes)	11.05

Source: 1987 Census of Manufactures. Four-digit SIC industries in which UNICOR produces were provided in a letter from James Hagerty, UNICOR, to Vickie Reh, EMAA, dated 8/7/90.

envelope production is far less labor intensive than industries that UNICOR already has entered.

It should be noted that the data used to compute these rankings are data from private firms in the United States. For most products, however, there is a range of possible technologies with different relative factor intensities. It may be possible, for example, to produce a given amount of the same product using either a labor intensive technology, i.e., one that uses a great deal of labor but little capital, or a capital intensive technology, i.e., one that uses only a small amount of labor but a great deal of capital. If our goal is to rank industries according to their labor intensity, the most appropriate ranking would be the ranking of labor intensities for products as they would be produced in a prison, rather than as they are produced in the private sector.

Ideally, therefore, we would like to determine rankings using data from prison production. Since prisons do not produce a sufficiently wide range of products (and, in particular, there are no prisons currently producing envelopes), such data do not exist. Alternatively, we could measure the "elasticity of substitution"[4] between labor and other inputs for every product that UNICOR might produce. We could then estimate how much labor intensity could be expected to increase in response to the fall in the relative price of labor as production is shifted from the private to the prison sector. Such a task, however, would be far beyond the scope of this paper.

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[4] The elasticity of substitution between labor and capital is the percentage increase in the labor-to-capital ratio that would be made by cost-minimizing firms in response to each percentage fall in the cost of labor relative to the cost of capital. The higher the elasticity of substitution for any given product, the greater the increase in labor intensity that could be expected when production is shifted from the private sector to a prison.

In the absence of any information to the contrary, our best course is to assume that the ability to substitute labor for other inputs is no higher or lower for envelopes than for all manufactured goods, so that our best estimate of the ranking for prison production would be the ranking for private production.

We could get some idea of the prison ranking, however, by looking at the relative labor intensity of envelope production in countries that have relative factor prices that correspond more closely to the relative factor prices within a U.S. prison (i.e., the less-developed countries). Such data is not directly available, but we can test the proposition that envelopes would have a higher labor-intensity ranking for prison production than for private production by looking at two indirect indicators of labor intensity that are examined in the next section.

B. Tests and Indirect Measures of Labor Intensity.

The preceding calculations on labor intensity may be misleading if many or most industries that appear to be more labor intensive than envelope production in fact tend to use more highly skilled labor. Because it is safe to assume that most prisoners employed by UNICOR begin with relatively few (noncriminal) job skills, envelope production would be closer to the ideal industrial employment for inmates if such production relies on unskilled labor (or on skills that can be taught and learned at low cost).

1. Domestic Production: Is American Production of Envelopes Concentrated in Relatively Low-Wage States?

One readily available indicator of the skill level required by workers in any industry is the average wage paid to workers. The higher the skill level, the higher the average wage tends to be. Thus, if in fact envelope production is intensive in the use of unskilled labor, we would predict that envelope production in the United States would be concentrated in areas of the country having an abundant supply of unskilled labor and therefore a relatively low wage.

To test this hypothesis, I compared data on the distribution of envelope employment by state (obtained from Attachment IV to UNICOR's own market study on the envelope industry[5]) to the average wage in the state (from the 1990 Statistical Abstract of the United States). My statistical analysis indicates that envelope production tends to occur in high-wage states, suggesting that envelope production utilizes skilled rather than unskilled labor.[6] Indeed, this analysis implies that in states in which the wage is just 10 percent below the all-state average (suggesting that the pool of available labor is less skilled than in the average-wage states), the number of envelope employees tends to be about 50 percent less than in the average-wage state. This suggests that envelope production is more (rather than less) skill intensive.

Using the same criterion of wage levels as a signal of skill levels, envelope production appears to be more skill intensive than other industries in which inmates are employed by UNICOR. The average annual wage for those industries in which UNICOR currently operates is slightly over $15,000, while that for envelope production is over $19,500, or more than 25 percent higher than the average. (See Table IV.) Out of the 37 UNICOR manufacturing industries (including envelopes) for which we could compile data, the envelope industry is very near the top of the wage scale, exceeding the average wage in all UNICOR industries but five. Once again, envelopes do not offer a close labor-intensity match to the kinds of industries that UNICOR has entered in the past.

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[5] An Analysis of the Impact on Private Industry Resulting from UNICOR's Entry Into Envelope Manufacturing, at Attachment IV (prepared by J.E. Hagerty, UNICOR Product Development Group, Oct. 31, 1989).

[6] This conclusion is based upon a simple linear regression of envelope employment in each state on a constant term and on the average wage paid in each state. The entire regression was highly significant at the .01 percent level; the coefficient of the average wage was positive and also significant at the .01 percent level. UNICOR's list of envelope employment provided for each state the number of envelope plants by an employee range. In calculating the number of employees in each state, we used the mid-point of the range provided. However, the final range was simply "over 1000," and for plants falling into that range, we simply used the minimum of the range (1000).

2. Foreign Trade: Does the United States Import Envelopes from Countries with Abundant and Cheap Unskilled Labor?

That envelope production is not intensive in the use of unskilled labor is also suggested by the patterns of United States trade. One standard result flowing from modern theories of international trade is that a nation tends to import those goods, the production of which is intensive in the use of resources or inputs that are relatively less abundant in that nation, and tends to export those goods, the production of which is intensive in resources that are relatively abundant in that country. Economic research has confirmed that the United States tends to export goods requiring relatively more land or human capital (skilled labor) in production, while it imports goods requiring relatively more unskilled labor in production.[7]

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[7] For example, one recent study concluded that "the strong U.S. disadvantage in unskilled labor intensive products and its relative advantages in human capital and physical capital intensive products [has] changed little over time." Bela Belassa and Marcus Noland, "The Changing Comparative Advantage of Japan and the United States," 3 Journal of the Japanese and

TABLE IV

Wage Levels of UNICOR Industries

Rank	SIC Code	UNICOR's Industry Description	Prod. Wages Per Prod. Worker
1	3812	Electrical Equip.	28142.41
2	3694	Electrical Equip.	22866.80
3	2522	Office Furn., except wood	21687.15
4	3429	Misc. Hardware	21393.34
5	2752	Commercial Printing	20141.34
6	**2677**	**Envelopes**	**19586.54**
7	3499	Metal, Fabricated	17880.46
8	3663	Radio/Broadcasting	17846.85
9	2542	Office/Store Fixt's	17512.20
10	2759	Commercial Printing	16945.89
11	3648	Lighting Equipment	16828.28
12	3993	Signs/Advertising	16561.09
13	2211	Fabric Mills, Cott.	16519.26
14	3089	Plastic Products	15829.70
15	2521	Wood Office Furn.	15661.16
16	3873	Watches/Clocks	15488.89
17	2599	Furniture/Fixtures	15384.26
18	2231	Cotton and Wool Textile	14966.94
19	3851	Opthalmic Goods	14829.11
20	3991	Brushes and Brooms	14741.94
21	3645	Lighting Fixtures	14525.71
22	2515	Mattresses, Found	14458.10
23	2514	Metal Household Furn.	13596.71
24	2394	Canvas Goods	13595.24
25	3999	Manufacturing, Misc.	13429.42
26	2511	Wood Household Furn.	13209.60
27	2499	Wood Products	12428.88
28	2392	Bed Linens & Bedspread	12116.82
29	2399	Textiles, Fabricated	11604.00
30	2322	Underwear, Mens/Boys	10858.90
31	2391	Draperies	10747.66
32	2393	Textile Bags	10452.05
33	2325	Trousers/Slacks	10420.67
34	2329	Clothing, Mens/Boys	10292.91
35	2321	Garments, Mens/Boys	10092.12
36	2326	Work Clothing	9163.88
37	2381	Gloves	8674.42
		AVERAGE (excluding envelopes)	15024.84

Source: 1987 Census of Manufactures. Four-digit SIC industries in which UNICOR produces were provided in a letter from James Hagerty, UNICOR, to Vickie Reh, EMAA, dated 8/7/90.

If, in fact, envelope production required intensive use of unskilled labor, then we would predict that the United States would tend to import envelopes from other countries, particularly less developed countries, (such as Mexico) that have a relative abundance of unskilled labor. In fact, the United States is a net exporter of envelopes, exporting over three billion envelopes in 1989 (valued at about ten million dollars). Moreover, the United States exports envelopes to many labor-rich countries, such as Mexico, Panama, and Singapore. In stark contrast, the United States is a net importer in 23 of the 24 industries in which UNICOR operates and for which data are available. (See Table V.)

III. SUPERIOR OPPORTUNITIES FOR JOB CREATION AT UNICOR

A. Current UNICOR Industries That Are More Labor Intensive and In Which UNICOR Has a Low Federal Market Share

In comparison to envelopes, there may be more labor intensive industries in which UNICOR already operates and in which UNICOR can expand its production without capturing more than a "reasonable share" of the Federal market. In light of the distorted incentives faced by UNICOR, it is more efficient for UNICOR to expand production in those industries before entering the less labor intensive envelope industry. By expanding output in any one such industry (or in a combination of several such industries) in such a way as not to exceed the "reasonable share" criterion, UNICOR could create more jobs than it proposes to create by entering envelope manufacturing.

How many industries fit these requirements? Table VI identifies the industries in which UNICOR can create new jobs for federal prisoners so as to satisfy not only its primary statutory criterion to maximize employment,

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International Economies 174, 186 (1989).

TABLE V
NET IMPORTS FOR INDUSTRIES IN WHICH UNICOR OPERATES

SIC Code	UNICOR's Industry Description	Imports (Units)	Imports (Value) (thousands)	Exports (Units)	Exports (Value) (thousands)	Exports - Imports (Units)	Exports - Imports (Value) (thousands)
2211	Fabric Mills, Cotton	1,292,958,912	960,893	NA	264,183	NA	(696,710)
2231	Fabric Mills, Wool	38,951,914	242,811	1,933,991	11,207	(37,017,923)	(231,604)
2321	Garments, Mens/Boys	73,297,581	3,735,014	4,573,335	146,217	(68,724,246)	(3,588,797)
2322	Underwear, Mens/Boys	7,309,462	126,444	3,323,167	65,002	(3,986,295)	(61,442)
2325	Trousers/Slacks	21,918,730	1,513,705	4,656,648	208,862	(17,262,082)	(1,304,843)
2326	Work Clothing	564,284	27,362	201,085	6,669	(363,199)	(20,693)
2329	Clothing, Mens/Boys	NA	NA	NA	NA	NA	NA
2381	Gloves, Dress/Work	783,921,029	219,860	5,743,202	28,549	(778,177,827)	(191,311)
2391	Curtains/Draperies	24,686,111	59,611	1,418,018	7,667	(23,268,093)	(51,944)
2392	Housefurnishings	679,162,138	814,580	25,532,202	172,703	(653,629,936)	(641,877)
2393	Textile Bags	35,537,273	27,747	13,497,200	18,182	(22,040,073)	(9,565)
2394	Canvas/Related Products	NA	NA	5,293,899	12,293	NA	NA
2399	Textiles, Fabricated	338,688,212	667,633	143,035,973	371,069	(195,652,239)	(296,564)
2492	Wood Products, Misc.	NA	NA	873,349	173,328	NA	NA
2499	Wood Products	NA	1,032,367	NA	132,559	NA	(899,808)
2511	Wood Household Furniture	NA	NA	NA	127,911	NA	NA
2514	Metal Household Furniture	NA	NA	NA	27,791	NA	NA
2515	Mattresses, Found.	550,402	57,595	25,020	27,535	(525,382)	(30,060)
2521	Wood Office Furn.	NA	NA	NA	15,331	NA	NA
2522	Non-Wood Office Furn	NA	NA	NA	86,708	NA	NA
2542	Office/Store Fixt's	NA	NA	NA	65,417	NA	NA
2599	Furniture/Fixtures	NA	4,716,859	NA	272,241	NA	(4,444,618)
2752	Commercial Printing	NA	214,805	NA		NA	(214,805)
2759	Commercial Printing	NA	NA	NA	363,888	NA	NA
3089	Plastic Products	NA	3,636,913	NA	1,500,971	NA	(2,135,942)
3429	Misc. Hardware	NA	1,091,165	3,832,370	535,373	NA	(555,792)
3499	Metal, Fabricated	NA	2,159,714	371,674,344	771,106	NA	(1,388,608)
3645	Lighting Fixtures	NA	NA	2,985,677	41,262	NA	NA
3648	Lighting Equipment	NA	623,649	NA	158,919	NA	(464,730)
3663	Radio/Braodcasting	NA	NA	NA	2,081,737	NA	NA
3694	Electrical Equip.	NA	2,100,945	NA	1,127,342	NA	(973,603)
3812	Detection Equip.	NA	NA	NA	2,020,348	NA	NA
3851	Opthalmic Goods	68,864,189	908,294	31,450,103	222,520	(37,414,086)	(685,774)
3873	Watches/Clocks	NA	1,905,366	NA	112,314	NA	(1,793,052)
3991	Brooms/Brushes	NA	205,287	NA	28,638	NA	(176,649)
3993	Signs/Advertising	NA	19,263	NA	76,580	NA	57,317
3999	Manufacturing, Misc.	203,562,487	954,480	NA	423,097	NA	(531,383)

Source: Bureau of Census' 1988 trade statistics on microfiches IM175 and EM575 but also its secondary criteria to avoid harming any one industry or capturing more than a reasonable market share in any particular Federal market. To make these calculations, I used the following methodology. I identified the industries that were more labor intensive than envelope manufacturing according to Table III and in which, I estimate, UNICOR's share of the Federal market is less than five percent.[8] There are 21 industries that satisfy these conditions.

I then computed what UNICOR's dollar sales in the Federal market would be in each of these 21 industries if UNICOR expanded output until it accounted for five percent of sales to the Federal Government. At that expanded level of production, I computed, using the labor intensity data in Table III, how many additional production workers would have to be employed to produce this higher level of output.

Table VI reports, by industry, these potential gains in employment in UNICOR's expansion of existing production. Specifically, UNICOR estimates that its envelope manufacturing facility would employ "over 130" inmates. Even if UNICOR uses labor no more intensively than the private sector for each of the industries in Table VI, UNICOR could expand production in the 21 industries listed (alone or in combination) and create more inmate employment than that projected by UNICOR in envelope manufacturing without exceeding the assumed "reasonable share" criteria. Indeed, UNICOR could increase output in

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[8] Section 4122(b) (2) does not define "reasonable share of the [Federal] market." Although my selection of five percent as the cutoff for "reasonableness" is arbitrary, it obviously will produce more conservative estimates of job creation by UNICOR than would a higher percentage threshold, such as ten percent. Industry-by-industry data on total sales to the Federal government were unavailable; I therefore assumed that in each industry, the share of sales to the Federal government is identical and equal to the share of Federal government purchases of all goods and services in the Gross National Product.

TABLE VI
Employment-Creation Opportunities for UNICOR

SIC Code	UNICOR's Industry	(A) Industry's Value of Shipments	(B) UNICOR Value of Shipments	(C) UNICOR's Market Share	(D) UNICOR's Federal Share	(E) 5 % of Federal Market	(F) Prod. Worker Per Million Dollars Shipments Value	(G) Increase in Employment
2329	Clothing, Mens/Boys	2,410,686,620	586,596	0.02%	0.32%	9,307,670	19.79	173
2326	Work Clothing	1,822,669,014	1,507,976	0.08%	1.07%	7,037,332	17.91	99
2321	Garments, Mens/Boys	4,570,753,521	73,320	0.00%	0.02%	17,647,697	16.07	282
2322	Underwear, Mens/Boys	1,156,605,634	1,771,330	0.15%	1.98%	4,465,659	15.38	41
2511	Wood Household Furn.	8,710,890,845	17,150,270	0.20%	2.55%	33,632,783	14.89	245
2499	Wood Products	3,597,200,704	2,122,744	0.06%	0.76%	13,888,806	14.08	166
2391	Draperies	1,680,549,296	5,507,848	0.33%	4.24%	6,488,607	13.90	14
2325	Trousers/Slacks	6,613,915,493	2,218,128	0.03%	0.43%	25,536,353	13.73	320
2211	Fabric Mills, Cott.	6,012,580,986	1,380,632	0.02%	0.30%	23,214,598	11.78	257
2514	Metal Household Furn.	2,337,225,352	947,772	0.04%	0.53%	9,024,036	11.35	92
2599	Furniture/Fixtures	2,139,109,155	995,608	0.05%	0.60%	8,259,109	11.02	80
3999	Manufacturing, Misc.	5,174,598,592	11,400	0.00%	0.00%	19,979,145	10.61	212
3993	Signs/Advertising	4,676,524,648	5,270,636	0.11%	1.46%	18,056,080	10.32	132
2399	Textiles, Fabricated	2,665,672,535	361,302	0.01%	0.18%	10,292,172	10.24	102
2759	Commercial Printing	9,794,690,141	1,042,220	0.01%	0.14%	37,817,336	9.88	364
3645	Lighting Fixtures	1,934,880,282	97,448	0.01%	0.07%	7,470,580	9.87	73
3851	Opthalmic Goods	1,844,063,380	2,533,532	0.14%	1.78%	7,119,936	9.35	43
3089	Plastic Products	36,865,767,606	14,417,466	0.04%	0.51%	142,338,871	8.97	1,148
2752	Commercial Printing	35,691,697,183	14,539,560	0.04%	0.53%	137,805,781	8.94	1,102
3499	Metal, Fabricated	6,711,500,000	702,690	0.01%	0.14%	25,913,127	8.57	216
3429	Misc. Hardware	8,923,415,493	569,846	0.01%	0.08%	34,453,342	8.09	274

Notes: See the following page.

Source: For Column (A), 1987 Census of Manufactures; four-digit SIC industries in which UNICOR produces were provided in a letter from James Hagerty, UNICOR, to Vickie Reh, EMAA, dated 8/7/90; data on the consumer price index, Federal government purchases of goods and services, and Gross National Product are from the Economic Report of the President (1990).

Notes to TABLE VI: Only industries in which UNICOR's share of the Federal market is less than 5 percent and which are more labor-intensive than envelopes are included in this table.

Column (A) is the 1987 value of shipments, adjusted for the increase in the consumer price index between 1987 and 1989.

UNICOR's shipments value in column (B) is an annual estimate calculated as the six-month estimate provided by UNICOR times two.

UNICOR's market share in column (C) is column (B) divided by column (A) times 100.

UNICOR's share of Federal sales in each four-digit industry (column (D)) is calculated on the assumption that the percentage of total industry shipments purchased by the Federal government in each industry is the same as the national average. The national average, estimated as 7.7 percent, is derived by dividing the Federal government's purchases of goods and services in 1989 by the Gross National Product in 1989. The share of UNICOR in the Federal market (reported in column (D)) is then estimated as column (C) divided by .077.

Column (E) is the level of UNICOR production that would be required for UNICOR to account for 5 percent of the Federal market.

Column (F) repeats the labor intensity values provided in Table III of the submission by Dr. Warren-Boulton.

Column (G) is the additional labor employed if UNICOR increased its current production in these industries in such a way as to account for 5 percent of all government purchases at the prevailing labor intensities in each industry. These entries are calculated as column (E) minus column (B), the resulting difference being multiplied by column (F) (itself divided by one million). It should be noted that this estimate of the additional employment generated may understate the "true" gains because the actual shipments value in each of the industries in 1989 was likely greater than that for 1987. Therefore, UNICOR's share of shipments in each industry is likely less than that calculated here, meaning that gap between current production and production at the "5 percent" level and therefore the potential for employment creation is greater than that suggested by the difference between column (E) minus column (B).

any one of 13 of the more labor intensive industries and generate greater inmate employment than in UNICOR's proposed envelope facility.

These results should be regarded as conservative estimates of job creation, because the increase of employment in column G of Table VI reflects the level of new job creation as if it were occurring in the private sector. (No data are available on the labor intensity, by industry, of production in the prison sector.) UNICOR, of course, claims that it conducts every production operation on a more labor intensive basis than it is conducted in the private sector; thus, the actual gain in employment from expanding UNICOR's market share in any one or more of the 21 industries in Table VI should be greater than the estimate that appears in column G.

IV. POLICY IMPLICATIONS

The policy implications of this report can be summarized as follows:

1. Because UNICOR faces the "wrong" set of prices for its inputs and outputs, we should expect that, if UNICOR were not subject to the selection and operational criteria specified by Congress, UNICOR would have clear incentives to select products that are too capital intensive, too land intensive and, most important, insufficiently labor intensive. Given this systematic bias, UNICOR cannot be expected to choose the most socially desirable set of products without direct intervention and monitoring from the rest of government and from private firms.

2. Envelope production does not appear to satisfy the Congressional directive that UNICOR must select products that would maximize employment for Federal prisoners. Envelope manufacturing is not relatively

labor intensive in terms of either employment per dollar value added or employment per dollar value of shipments. Using these measures, envelope production is also substantially less labor intensive than most of the industries in which UNICOR has initiated production. In addition, envelopes tend to be produced in higher-wage areas of the United States, indicating that the skill intensity of envelope production may be significant. And, most startling, envelopes are actually exported from the United States to less-developed countries (such as Mexico) that have an abundance of unskilled labor -- exactly the opposite of what one would expect if in fact the production process of envelopes relied intensively on unskilled labor.

3. There are 21 industries in which UNICOR currently operates that are more labor intensive than envelope manufacturing and in which UNICOR may account for less than five percent of sales to the Federal Government. These 21 industries are superior to envelope manufacturing as candidates for creating new jobs for Federal prisoners.

In sum, on the basis of the economic evidence presented here, I conclude that there are many other industries that are significantly more labor intensive than the envelope industry, and that envelope manufacturing is highly unlikely to be an industry whose selection by UNICOR would comply with what I understand to be Congress' directive that UNICOR produce "only those products which permit employment of the greatest number of inmates."

SIGNPRINT
1952 East Grand
Springfield, Mo. 65804
417-831-1186

April 24, 1990

Honorable Ike Skelton
Chairman, Subcommittee on Procurement
B-363 Rayburn Office Building
Washington, DC 20515

Dear Congressman Skelton:

Because of your position and because of your interest in small business, particularly in our home state of Missouri, I wanted you to be aware of a frustrating, time-consuming and expensive experience I had a few years ago in attempting to compete with UNICOR (Federal Prison Industries).

In 1985, my company was awarded a contract of about $6000 to produce signage at Fort Leonard Wood. The contract was fulfilled and Fort Wood was pleased with our work.

The next year, a solicitation appeared in Commerce Business Daily for similar signage for Fort Wood. We submitted a bid. The amount of the contract this time was $8000, and it was noted that the job was a Small Business-Small Purchase Set-Aside.

After the bids were opened, Fort Wood informed me that SIGNPRINT was the low bidder...but that they had learned that UNICOR now makes this type of signage and that unless UNICOR would grant a waiver, by law they were required to buy from UNICOR.

UNICOR refused to grant a waiver, in fact lowered its price to be competitive with mine. Loss of the $8000 contract represented about 5% of my business volume in 1986, which to me was significant.

Correspondence with Fort Wood after that incident revealed that Fort Wood in fact obtained a price from UNICOR for the signage first, considered the price to be too high, then put the job out for bidding. We bid in good faith, but were betrayed by Fort Wood and by UNICOR.

I have had no other opportunities to bid on signage at Fort Wood since that incident in 1986.

Just last week, I met with the Director of Contracting and Procurement, and one of his assistants, at Fort Wood to plead my case as a small business. They were sympathetic with my situation, but said their hands are tied under the law. "There's nothing we can do for companies like yours until and unless Congress changes the law," Director of Contracting and Procurement Glen Spears told me.

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Chapter 307, Section 4122 (b), Title 18 of the U.S. Code says, in part, that Federal Prison Industries shall "operate the prison shops (so) that no single private industry shall be forced to bear an undue burden of competition from the products of the prison workshops, and to reduce to a minimum competition with private industry or free labor."

No one can quarrel, philosophically, with the intent of Congress in establishing Federal Prison Industries. But aggressive product development and marketing by what now is a $350 million corporation with four manufacturing divisions and net income of $9 million in 1988 indicate to me that UNICOR has gone far afield from the original intent of Congress.

Further evidence is contained in a front page notice in the April 11 issue of the Commerce Business Daily that UNICOR now proposes to produce "(1) General Purpose Trunks, and (2) Shoes." That news certainly will be of interest to shoe and garment manufacturers in Missouri.

As a small businessman and as a fellow Missourian, I urge you to give favorable consideration to legislation which would enable businesses like mine to compete with UNICOR.

Sincerely,

Eddie Bass

Eddie Bass

cc: Congressman Mel Hancock